

Artificial Intelligence Driven Alternative Dispute Resolution

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Summary: The utilization of new technologies in the legal domain is not a recent development. However, the idea of implementing artificial intelligence in the realm of dispute resolution has garnered significant attention lately, primarily due to its capacity to expedite the resolution process and mitigate financial expenditures. Alternative dispute resolution is a preferred method for resolving commercial and investment disputes due to its key advantages of neutrality, flexibility, and globally enforceable awards. The objective of this study is to investigate the integration of artificial intelligence within the framework of alternative dispute resolution processes. Directive 2013/11/EU on Consumer Alternative Dispute Resolution facilitates the resolution of disputes arising from contractual obligations between EU consumers and traders within the European Union. However, it is important to note that the Directive was drafted more than a decade ago and may not effectively address the evolving landscape of consumer market trends and new technologies.

Key words: Alternative Dispute Resolution, Artificial Intelligence, European Union

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1. 1 Introduction

Alternative dispute resolution (hereinafter also referred to as “ADR”) has been a preferred method for resolving commercial and investment disputes due to its key advantages of neutrality, flexibility, and globally enforceable awards. The accessibility of ADR is dependent on various factors, including finances, the availability of assistance, the ease scenario and most importantly the level of awareness. Most notably, cross-border cases pose significant barriers to access, particularly in relation to applicable law, language, costs, and complexity of the procedures.¹

According to the consumer conditions survey published by the European Commission, a mere 5% of EU consumers who encountered a problem took action at a ADR resolution body.² The prevalence of informatization and e-commerce in the EU economy has notably increased, rising up to 4% of the EU’s gross domestic product. This rise underscores the growing significance of ADR across the Member States.³

Directive 2013/11/EU on Consumer Alternative Dispute Resolution (hereinafter also referred to as “ADR Directive”)⁴ deals with disputes arising from contractual obligations for EU consumers. The legal foundation for the ADR Directive is Article 114 of the Treaty on the functioning of the European Union (hereinafter also referred to as “TFEU”)⁵, in accordance with Article 169 of TFEU.⁶ The ADR directive bestows upon the European Union the power to implement measures that facilitate the harmonization of national regulations. The primary objective of the directive is to ensure that, within all Member States, ADR entities that adhere to common quality criteria are accessible for the prompt,

¹ European Parliament: Impact assessment (SWD(2023) 335, SWD(2023) 337 (summary)) accompanying a Commission proposal for a Directive of the European Parliament and of the Council amending Directive 2013/11/EU on alternative dispute resolution for consumer disputes, as well as Directives (EU) 2015/2302, (EU) 2019/2161 and (EU) 2020/1828, COM(2023) 649. 2024 [online]. Available at: [https://www.europarl.europa.eu/RegData/etudes/BRIE/2024/753200/EP_RS_BRI\(2024\)753200_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2024/753200/EP_RS_BRI(2024)753200_EN.pdf)

² European Parliament, Briefing EU Legislation in Progress. Alternative dispute resolution. 2023 [online]. Available at: [https://www.europarl.europa.eu/RegData/etudes/BRIE/2024/757639/EP_RS_BRI\(2024\)757639_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2024/757639/EP_RS_BRI(2024)757639_EN.pdf)

³ Ibid.

⁴ Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR). [online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32013L0011>

⁵ The treaty on the functioning of the European Union [online]. Available at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12012E/TXT:en:PDF>

⁶ Ibid.

amicable, affordable, and fair resolution of disputes across all consumer market sectors. The directive has been for years instrumental in ensuring consumer protection. However, it is important to note that the ADR Directive was drafted more than a decade ago and may not effectively address the evolving landscape of consumer market and the advent of new technologies.⁷

To mend this situation, on October 17, 2023, the European Commission adopted a proposal for a directive amending several directives pertaining to consumer rights and also the process of ADR. As the effectiveness of the ADR Directive is directly proportional to the reinforcement of the right to an effective remedy and to a fair trial as outlined chapter VI by Article 47 of the Charter of Fundamental Rights of the EU (hereinafter also referred to as “CFREU”).⁸

Digitalization have been shown to reduce ADR costs while also enhance the effectivity and consistency of ADR outcomes. The financial implications of digitalization in the ADR process can vary considerably among Member States, mainly influenced by factors such as existing infrastructure, the number of accredited and monitored ADR entities and the presence of pre-existing ADR frameworks.⁹

The Commission conducted a comprehensive evaluation in 2023 with the objective to assess the extent to which the ADR Directive adheres to the requirements stipulated in its Chapter II. Bearing in mind, that the scope of the ADR Directive, is quite narrowly defined, and is believed to be ill-suited to address a broad range of disputes that arise, particularly in the digital market. The evaluation was based on the five criteria outlined in the „*Better Regulation Toolbox*“¹⁰: effectiveness, efficiency, relevance, coherence, and EU added value.

The Commission evaluation reported that cross-border ADR, is still underutilized in many Member States due to a number of factors, mainly including costs,

⁷ Explanatory memorandum of the proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2013/11/EU on alternative dispute resolution for consumer disputes, as well as Directives (EU) 2015/2302, (EU) 2019/2161 and (EU) 2020/1828 [online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52023PC0649>

⁸ Charter of fundamental rights of the European union [online]. Available at: https://www.europa.eu/charter/pdf/text_en.pdf.

⁹ European Parliament, Briefing. Initial Appraisal of a European Commission Impact Assessment. 2024 [online]. Available at: [https://www.europarl.europa.eu/RegData/etudes/BRIE/2024/753200/EPRS_BRI\(2024\)753200_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2024/753200/EPRS_BRI(2024)753200_EN.pdf), also BALLESTEROS, M., ÁVILA., J. Online Dispute Resolution Platforms (ODR): A Legal and Technical Perspective. *Law and Business*. 2024, vol. 4, no. 1, Sciendo, pp. 28–38 [online]. Available at: <https://doi.org/10.2478/law-2024-0006>

¹⁰ Based on the “Tool 47” of the ‘Better regulation’ toolbox. [online]. Available at: https://commission.europa.eu/law/law-making-process/better-regulation/better-regulation-guidelines-and-toolbox_en

complex procedures, language, and applicable law.¹¹ The effectiveness of the ADR directive has the potential to affect consumer trust in digital markets or exploit vulnerabilities among consumers. Consumers require effective procedures to address disputes, which are becoming increasingly intricate to deal with in the context of new technologies.

2. The synergy between alternative dispute resolution and artificial intelligence

The evolution of artificial intelligence (hereinafter also referred to as “AI”) has been the subject of ongoing research and development for several decades.¹² The emergence of large language models, with neural networks and deep learning algorithms, has led to a significant expansion in the range of potential applications of AI.¹³ The utilization of AI in the realm of dispute resolution has garnered significant attention, primarily due to its capacity to expedite the resolution process and mitigate financial expenses.¹⁴

The advent of AI has led to the idea of integration an additional party into the conventional ADR model.¹⁵ This additional party is the technology that functions as the party that can either replace the neutral human third-party¹⁶ by helping

¹¹ Explanatory memorandum of the proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2013/11/EU on alternative dispute resolution for consumer disputes, as well as Directives (EU) 2015/2302, (EU) 2019/2161 and (EU) 2020/1828 [online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52023PC0649>

¹² See ANYOHA, R. *The history of Artificial Intelligence*. 2017 [online]. Available at: <http://sitn.hms.harvard.edu/flash/2017/history-artificial-intelligence/> or MUHLENBEIN, H. *Artificial Intelligence and Neural Networks The Legacy of Alan Turing and John von Neumann*. 2006 [online]. Available at: https://www.researchgate.net/publication/228579170_Artificial_Intelligence_and_Neural_Networks_The_Legacy_of_Alan_Turing_and_John_von_Neumann

¹³ See MESARČÍK, M., GYURÁSZ, Z. et al. *Právo a umelá inteligencia*. 1. vydanie. Bratislava: Právnická fakulta Univerzity Komenského v Bratislave. 2024 [online]. Available at: https://www.flaw.uniba.sk/fileadmin/praf/Pracoviska/Ustavy/UPITPDV/E-KNIHY/Pravo_a_umela_inteligencia_ucebnica_01.pdf

¹⁴ SCHERER, M. *Artificial Intelligence and Legal Decision-Making: The Wide Open? Study on the Example of International Arbitration*. 2019 [online]. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3392669

¹⁵ See CARNEIRO, D., NOVAIS, P., ANDRADE, F. et al. Online dispute resolution: an artificial intelligence perspective. *Artif Intell Rev* 41, 2014, pp. 211–240 [online]. Available at: <https://doi.org/10.1007/s10462-011-9305-z>

¹⁶ The arbitrator, mediator, negotiator or expert. See HAMULÁKOVÁ, K., KŘIVÁČKOVÁ, J. Alternative Methods of Collective Disputes Resolution in the Czech Republic. *TalTech Journal of European Studies*. 2016 [online]. Available at: <https://doi.org/10.1515/bjes-2016-0014>

parties reach agreements or supplement and assist the neutral human third-party through assistance such as evaluating, identifying, organizing, clarifying, caucusing, calculating and many more. Assistive technologies are a category of technologies that can support, inform, or make recommendations for the neutral human third-party. Some of these AI tools have been developed to assist in legal research, negotiation, settlement, document drafting or even help in decision-making.¹⁷ These technologies can expedite and improve the ADR process by eliminating administrative and procedural impediments. Assistive technologies are being leveraged in real time as parties frequently employ AI tools for document review, research purposes, just as there is a rising demand for these systems for transcription and translation tasks.¹⁸

These abilities that are embedded within advanced AI-based assistive technologies which growth shows no sign of halting any time soon. Consequently, it is imperative to examine the role and impact of AI in ADR by assessing its benefits and challenges, in order to determine the extent to which the utilization of such tools in the ADR field is a significant development.

2.1. An artificial intelligence driven alternative dispute resolution

ADR seems to be particularly suitable candidate for the use of intelligent systems such as AI due to its voluntary nature, which by itself expects the consent of the parties involved prior to its engagement. There are several potential benefits may emerge from the implementation of an AI driven ADR. These benefits are not limited to the advantages that result from an increase in the adoption of ADR in general. For instance, the reduction in the workload for the justice system and the conservation of time and financial resources for the involved parties by preventing litigation is already a notable benefit.¹⁹

More importantly, an AI driven ADR is likely to be economically significantly more appealing for all parties involved. Quicker and potentially cheaper than traditional ADR, especially when indirect costs such as management time and

¹⁷ ZELEZNIKOW, J. Using Artificial Intelligence to provide Intelligent Dispute Resolution Support. *Group Decis Negot* 30. 2021, pp. 789–812 [online]. Available at: <https://doi.org/10.1007/s10726-021-09734-1>

¹⁸ ORR, D., RULE, C. Artificial Intelligence and the Future of Online Dispute Resolution. *Artificial Intelligence and Its Impact on the Future of ADR*. 2019 [online]. Available at: https://nysba.org/NYSBA/Sections/Coursebooks/Dispute%20Resolution/2019%20Fall%20Meeting/_Panel%205.pdf?srsltid=AfmBOooAuaFL3e89nVj89ukBVs8K9AehYY5Q9W9yWR6_cheNT40KJJRH

¹⁹ CIHANOVA, J. *The role of artificial intelligence in alternative dispute resolution*. 2023 [online]. Available at: <https://afi.flaw.uniba.sk/index.php/AFI/article/view/784>

legal costs are included.²⁰ This would not only result in financial savings for the parties involved but also enhance access to justice, particularly for smaller businesses that may lack the resources to engage in litigation or ADR for long periods of time.

Secondly, the incorporation of AI tools in ADR has the potential to yield more impartial and equitable outcomes.²¹ Unconscious bias, the quality of advocacy, and the person of the neutral third party have the potential to improperly influence decision-making processes. The question of improving decision-making have been a long-time debate among the theoreticians and practitioners. However, it is also worth considering how free of errors human decision makers are.²²

Additionally, the impersonal nature of an AI driven ADR, which eliminates the necessity for face-to-face meetings, advocacy or conflict, has the potential to mitigate tensions. The absence of an emotional element in dispute resolution can encourage parties to reach a settlement.²³

2.1.1. *The worries*

Notwithstanding the all the above-mentioned benefits, AI tools have long been raising concerns about transparency, bias, accuracy, confidentiality, and effecting on due process.

Most famously, the training of AI tools with incorrect data can lead to the perpetuation of biases or the production of inaccurate results.²⁴ Real-life examples have demonstrated the potential for AI-generated results to be false, including

²⁰ See AL-RASHID, M., BARDYN, U. The Role of Artificial Intelligence in International Arbitration. *Global Arbitration Review*. 2019 [online]. Available at: <https://globalarbitrationreview.com/review/the-arbitration-review-of-the-americas/2020/article/the-role-of-artificial-intelligence-in-international-arbitration>

²¹ See AMIN, N. A new frontier in online dispute resolution: combining ai and mindfulness. *Journal of law, technology, & the internet*. 2024 [online]. Available at: <https://scholarlycommons.law.cas.se.edu/cgi/viewcontent.cgi?article=1161&context=jolti>

²² We dwelled more into the question of decision-making in. GYURÁSZ, Z., GORNALOVÁ, D. *Use of Artificial Intelligence in Arbitration*. Cofola International 2021 [online]. International and National Arbitration – Challenges and Trends of the Present and Future. ISBN 978-80-210-863.

²³ More into the question of emotions in ADR see, ABBOTT, R., ELLIOTT, B. *Putting the Artificial Intelligence in Alternative Dispute Resolution: How AI Rules Will Become ADR Rules*. 2023 [online]. Available at: <https://www.jamsadr.com/files/uploads/documents/articles/abbott-ryan-amicuscuriae-putting-the-artificial-07-2023.pdf>

²⁴ MESARČÍK, M., GYURÁSZ, Z. et al. *Právo a umelá inteligencia*. 1. vydanie. Bratislava: Právnická fakulta Univerzity Komenského v Bratislave, 2024 [online]. Available at: https://www.flaw.uniba.sk/fileadmin/praf/Pracoviska/Ustavy/UPITPDV/E-KNIHY/Pravo_a_umela_in_teligencia_ucebnica_01.pdf

the generation of non-existent case quotations.²⁵ The inability to recreate the decision-making process of an AI-based tool represents a significant hurdle. As the cornerstones of an effective dispute resolution and the administration of justice are due process and the establishment of trust in the fairness of the decision-making. Notwithstanding the black box problem²⁶, there may be a threshold at which parties are not willing to trust an AI driven ADR anymore without the ability to be able to understand and recreate the outputs of the tool.²⁷

Secondly, the issue of bias warrants serious consideration.²⁸ A party may be more inclined to wrongly relinquish a compelling argument or case if an AI-based tool disagrees with it. Furthermore, there is a concern that parties may utilize AI tools for cases that are not well-suited for it, such as those that are complex and multi-faceted, or require substantial emotional intelligence.²⁹ Misuse of an AI driven ADR in these ways would result in a negative outcome for the party and may ultimately undermine their trust in the administration of justice.

Even though, the worries are present, and they are not to be taken lightly, the protentional benefits of an AI driven ADR are enormous. Theoreticians have long sought answers for how to make dispute resolution faster, easier, more appalling and more effective, and the answer to this question is in AI. Therefore, we shall find the right way to implement AI in ADR while reducing the risks and keeping most of the upside possible. This shift, however, prompts critical questions regarding the implications of these technological advancements for access to justice and the representation of affected individuals. As the prospect of AI driven ADR becomes more imminent, these legal and ethical considerations become increasingly pressing.

²⁵ Cases such: “Mata v. Avianca, Inc.”, or “Darlene Smith v. Farwell” or see Here’s What Happens When Your Lawyer Uses ChatGPT in The New York Times. 2023 [online]. Available at: <https://www.nytimes.com/2023/05/27/nyregion/avianca-airline-lawsuit-chatgpt.html>

²⁶ For the black box problem see ZEDNIK, C. Solving the Black Box Problem: A Normative Framework for Explainable Artificial Intelligence. *Springer*, 2019 [online]. Available at: <https://arxiv.org/pdf/1903.04361.pdf> or GUIDOTTI, R., MONREALE, A., PEDRESCHI, D. The AI black box Explanation Problem. *ERCIM*, 2019 [online]. Available at: <https://ercim-news.ercim.eu/images/stories/EN116/EN116-web.pdf#page=12>

²⁷ This threshold may be low-value or less consequential disputes and consequently, there may be parties that deem this approach wholly inappropriate when their rights are impacted.

²⁸ FRIEDMAN, E. et. al. Generative AI: Opportunities and Risks in Arbitration. *Freshfields*, 2024 [online]. Available at: <https://www.freshfields.com/en-gb/our-thinking/campaigns/international-arbitration-in-2024/generative-ai-opportunities-and-risks-in-arbitration/>

²⁹ ABBOTT, R., ELLIOTT, B. *Putting the Artificial Intelligence in Alternative Dispute Resolution: How AI Rules Will Become ADR Rules*. 2023 [online]. Available at: <https://www.jamsadr.com/files/uploads/documents/articles/abbott-ryan-amicuscuriae-putting-the-artificial-07-2023.pdf>

3. Legal scope of ai and adr

AI and ADR are both subject to regulation through rules that pertain to broader domains, such as privacy and advertising practices.³⁰ While the debate surrounding the optimal regulatory framework for ADR and the use of AI in ADR remains ongoing, encompassing a range of approaches including command-and-control regulations, self-regulation, hard or soft-law regulation.³¹

The absence of formal procedural and institutional safeguards and enforcement mechanisms has led some to question about the quality of ADR.³² Even though, ADR is not subject to the same regulations as conventional litigation, there are numerous laws that apply to ADR, despite not being ADR-specific. These include professional standards that apply to advocates and parties in ADR, as well as data protection and cybersecurity laws that govern the use of certain information in ADR proceedings, and these very same regulations shall also apply to the use and development of AI systems in ADR.

The article 17(1) of the UNCITRAL Rules³³ stipulates: “*The arbitral tribunal may conduct the arbitration in such manner as it deems appropriate, provided that the parties are treated with equality and that at an appropriate stage of the proceedings each party is given a reasonable opportunity of presenting its case. The arbitral tribunal, in exercising its discretion, shall conduct the proceedings so as to avoid unnecessary delay and expense and to provide a fair and efficient process for resolving the parties’ dispute.*” This discretion has been typically sufficiently broad to encompass the utilization of technology to ADR, including AI. The integration of AI into ADR encompassing a wide spectrum of tasks, from facilitating basic functions such as video conferencing and scheduling, to more sophisticated tasks at the automation end.³⁴

³⁰ ATLESON, M. Keep Your AI Claims in Check. *Federal Trade Commission*. 2023 [online]. Available at: <https://www.ftc.gov/business-guidance/blog/2023/02/keep-your-ai-claims-check>

³¹ LIYANAGE, C. The Regulation of Online Dispute Resolution: Effectiveness of Online Consumer Protection Guidelines. *Deakin Law Review* 17(2), 2013 [online]. Available at: <https://ojs.deakin.edu.au/index.php/dlr/article/view/78/82>

³² ROLPH, E. et al. Escaping the Courthouse: Private Alternative Dispute Resolution Escaping the Courthouse: Private Alternative Dispute Resolution in Los Angeles. *Journal of Dispute Resolution*. 1996 [online]. Available at: <https://scholarship.law.missouri.edu/cgi/viewcontent.cgi?article=1323&context=jdr>

³³ UNCITRAL Expedited Arbitration Rules UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration. 2021 [online]. Available at: https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/21-07996_expedited-arbitration-e-ebook.pdf

³⁴ GYURÁSZ, Z., GORNAIOVÁ, D. *Use of Artificial Intelligence in Arbitration*. Cofola International 2021 [online]. International and National Arbitration – Challenges and Trends of the Present and Future. ISBN 978-80-210-863.

3.1. EU approach

The European Union's Artificial Intelligence Act³⁵ (hereinafter also referred to as "AI ACT" or "AIA"), acts as a landmark for harmonized rules on AI. Adopted by the European Parliament on March 13, published in the Official Journal of the European Union on July 12, and has entered into force on the twentieth day following that of its publication.

The AI Act employs a risk-based approach, which means that it categorizes activities according to the likelihood of harm caused by AI systems, and the regulatory duties vary according to this level of risk.³⁶ These specific obligations are regarding documentation, disclosure, and transparency, while these obligations range from voluntary to obligatory according to the risk-level of the system.³⁷

The activities of the third-party neutral are designated as "high-risk". As per Annex III, Art. 8(a) of the AI ACT stipulates that: *"AI systems intended to be used by a judicial authority or on their behalf to assist a judicial authority in researching and interpreting facts and the law and in applying the law to a concrete set of facts or used in a similar way in alternative dispute resolution are to be classified as high-risk AI systems."* This assertion is further substantiated by Recital 61, which stipulates that *"AI systems intended to be utilized by alternative dispute resolution bodies for the administration of justice and democratic processes should also be regarded as high-risk when the outcomes of the alternative dispute resolution proceedings engender legal consequences for the parties involved."*

Article 6(3) enumerates exceptions to the high-risk classification, including circumstances where the use of otherwise high-risk AI systems does not pose a significant risk of harm to the health, safety, or fundamental rights of natural persons. The following situations are applicable:

- a) the AI system is intended to perform a narrow procedural task,
- b) the AI system is intended to improve the result of a previously completed human activity,

³⁵ Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act) [online]. Available at: <https://eur-lex.europa.eu/eli/reg/2024/1689/oj/eng>

³⁶ See MALACKA, M. AI Legislation, Private International Law and the Protection of Human Rights in the European Union. *European Studies – the Review of European law, Economics and Politics*. 2024, vol. 11, no. 1, pp. 122–151, DOI: 10.2478/eustu-2024-0006.

³⁷ Recital 26 of AIA.

- c) the AI system is intended to detect decision-making patterns or deviations from prior decision-making patterns and is not meant to replace or influence the previously completed human assessment, without proper human review; or
- d) the AI system is intended to perform a preparatory task to an assessment relevant for the purposes of the use cases listed in Annex III.

Regarding the question of replacing the „*neutral human third-party*” with automated systems, Article 22(1) of Europe’s data protection law, the General Data Protection Regulation (hereinafter also referred to as “GDPR”)³⁸, allows persons “*to refuse to be the subject of a decision based exclusively on automated processing*” when the automated decision is not required by law and entitles them to decisions made by human decision-makers. While the right to refuse to be the subject of automated decision is relevant, as stated earlier, ADR seems to be particularly suitable candidate for the use of intelligent systems such as AI due to its voluntary nature.

From the digital side of point, article 21 of the Digital Services Act³⁹ (hereinafter also referred to as “DSA”), pertaining to out-of-court dispute settlement, is not in conflict with the article 21(9) of the ADR Directive. Additionally, it establishes procedures for users of intermediary services to voice concerns regarding content moderation decisions of the intermediary concerning illegal or harmful content, including instances where the service provider elects not to take action subsequent to receiving a notice.

It is also noteworthy that the EU’s proposed amendments to its product liability laws will complement the AI Act by ensuring that providers and manufacturers of defective AI or AI-enabled systems that cause physical injury, property damage, data loss, or privacy breach are liable to compensate injured parties.⁴⁰ These regulations are designed to apply comprehensively to both novel and existing hardware and software products, with manufacturers assuming liability for harms arising from alterations or software updates to products already available in the market.

³⁸ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) [online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02016R0679-20160504>

³⁹ Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act). [online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32022R2065>

⁴⁰ New liability rules on products and AI to protect consumers and foster innovation. 2022 [online]. Available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_22_5807

The proposed amendments to its product liability laws are still in work, while the AI Act will be implemented in stages and most provisions related to high-risk AI systems will apply 24 months after the Act has entered into force.⁴¹ This means that the domain of ADR still has time to consider the extent to which the use of AI used and how to deal with the scope of the acts.

3.2. SVAMC AI guideline

The most notable initiative aside from AIA for the questions of AI driven ADR is the Silicon Valley Arbitration & Mediation Centre's (hereinafter also referred to as "SVAMC") AI GUIDELINE (hereinafter also referred to as "The GUIDELINE").⁴² As on April 30, 2024, SVAMC promulgated a guideline pertaining to the utilization of artificial intelligence in the context of ADR. According to the SVAMC, the Guidelines "*offer a set of best practices for the use of AI in international arbitration*" and "*seek to address both current and future applications of artificial intelligence from a principled framework, while also bearing in mind that the technology will continue to evolve rapidly*".⁴³

The Guideline adopt a human-centric approach to the use of AI with the objective of promoting fairness, efficiency, and transparency with seven guiding parts:

- Part 1: Understanding the uses, limitations, and risks of AI applications
- Part 2: Safeguarding confidentiality
- Part 3: Disclosure
- Part 4: Duty of competence or diligence in the use of AI
- Part 5: Respect for the integrity of the proceedings and the evidence
- Part 6: Non-delegation of decision-making responsibilities
- Part 7: Respect for due process

Parts 1, 4, and 6 deals with the necessity of human responsibility in decision-making. Parties and their representatives bear responsibility for any errors or inaccuracies for the output produced by an AI tool and should conduct a thorough review of that output to verify its factual and legal accuracy. Similarly, neutral third party is bound by the same standard, and they are not permitted to delegate any aspect of their personal mandate, particularly the decision-making process, to an AI tool.

Parts 3, 5, and 7 address the question of transparency. Interestingly and very much contrary to the emerging trends, which tend to require parties to disclose

⁴¹ Article 113 of AIA.

⁴² Guidelines on the use of artificial intelligence in arbitration. 2024 [online]. Available at: <https://svamc.org/wp-content/uploads/SVAMC-AI-Guidelines-First-Edition.pdf>

⁴³ Ibid.

the use of AI tools, the Guidelines stipulate that disclosure is “*not necessary as a general matter*” and that decisions should be made on a case-by-case basis. In instances where disclosure is made, the Guideline stipulates that the disclosure should have all the information relevant of the tool’s settings and the prompt, which may assist in reproducing and evaluating the outputs.

Part 2 deals with the guarantees for the utilization of AI tools in accordance with confidentiality. It also urges the parties to refrain from submitting confidential information to AI tools without adequate authorization.

The Guideline is not intended to replace or override laws or regulations, rather, they are designed to serve as a supplementary international standard that establishes a common denominator for the ethical and effective use of AI in ADR.⁴⁴ The Guideline also include a model clause to be included in an agreement for the purpose of adopting the Guidelines in any ADR proceedings.

4. Impact and Outcomes

The implementation of AI tools into the conventional ADR procedures is likely to be compelled by competitive pressures also. Akin to the increased competition faced by the transition of the traditional legal practice to the new digital age with the emergence more and more automated legal practice.⁴⁵

It is therefore reasonable to hypothesize that, at some point, all ADR will become AI driven ADR and as this transition happens, the rules of AI will increasingly apply to ADR.⁴⁶

One of the more interesting impacts that AI driven ADR have to offer is that in developing countries, it could bring more reliable and transparent justice, counteracting possible factors such as corruption.⁴⁷ By providing consistent and fair dispute resolution, these countries could foster stronger institutional values

⁴⁴ MILLS, T., SHANKER, M. *New frontiers: Regulating artificial intelligence in international arbitration*. 2024 [online]. Available at: <https://www.nortonrosefulbright.com/en/knowledge/publications/3cb82b55/new-frontiers-regulating-artificial-intelligence-in-international-arbitration>.

⁴⁵ ABBOTT, R., ELLIOTT, B. *Putting the Artificial Intelligence in Alternative Dispute Resolution: How AI Rules Will Become ADR Rules*. 2023 [online]. Available at: <https://www.jamsadr.com/files/uploads/documents/articles/abbott-ryan-amicuscuriae-putting-the-artificial-07-2023.pdf>.

⁴⁶ LARSON, J. et al. How we Analyzed the COMPAS Recidivism Algorithm. *ProPublica*, 2016 [online]. Available at: <https://www.propublica.org/article/how-we-analyzed-the-compas-recidivism-algorithm>.

⁴⁷ See BLACK, N. *Access to Justice 2.0: How AI-powered software can bridge the gap*. 2024 [online]. Available at: <https://www.abajournal.com/columns/article/access-to-justice-20-how-ai-powered-software-can-bridge-the-gap>

and encourage and even more investments in the system.⁴⁸ However, this approach is not without significant challenges, as developing countries often lack the resources, technological capabilities, and capacity to implement such novel technology.

5. Conclusion

In this article we have analyzed the concept of AI in ADR. With the emergence of large language models, which are supported by neural networks and deep learning algorithms, has led to a significant expansion in the range of potential applications of AI. While nowadays EU citizens are increasingly engaging in online purchases and the advent of new technologies have become more apparent than ever and yet ADR is still underutilized in many Member States due to a number of factors, mainly including costs, complex procedures, language, and applicable law.

With the advent of artificial intelligence led to the idea of integration of an additional party into the conventional ADR model through abilities such as evaluating, identifying, organizing, clarifying, caucusing, calculating and many more. Several potential benefits may emerge from the implementation of an artificial intelligence driven alternative dispute resolution. These benefits are not limited to the advantages that result from an increase in the adoption of ADR in general.

Notwithstanding the all the benefits, AI tools have long been raising concerns about transparency, bias, accuracy, confidentiality, and effecting on due process. Artificial intelligence driven alternative dispute resolution prompts critical questions regarding the implications of these technological advancements for access to justice and the representation of affected individuals. As the prospect of artificial intelligence driven alternative dispute resolution becomes more imminent, these legal and ethical considerations become increasingly pressing.

AI and ADR have been the subject to regulation through rules that pertain to broader domains. Even though, the ADR is not subject to the same regulations as conventional litigation, there are numerous laws that apply to ADR, despite not being ADR-specific. While the UNCITRAL rules has been typically sufficiently broad to encompass the utilization of technology, including artificial intelligence. Nevertheless, with the European Union's Artificial Intelligence that lays down harmonized rules on artificial intelligence, the activities of the third-party neutral are

⁴⁸ ROBERTS, O. *AI-Fueled Alternative Dispute Resolution Is Law's Next Frontier*. 2024 [online]. Available at: <https://news.bloomberglaw.com/us-law-week/ai-fueled-alternative-dispute-resolution-is-laws-next-frontier>

designated to be a high-risk utilization of AI tools. It is also noteworthy that the EU's proposed amendments to its product liability laws will complement the AI Act.

The most notable initiative aside from AIA for the questions of artificial intelligence driven alternative dispute resolution is SVAMC AI GUIDELINE. The Guideline is not intended to replace or override laws or regulations; rather, they are designed to serve as a supplementary international standard that establishes a common denominator for the ethical and effective use of AI in ADR. It is reasonable to hypothesize that slowly, but surely all ADR will become artificial intelligence driven alternative dispute resolution. As this transition accelerates, the rules of AI will increasingly apply to ADR.

It remains to believe that the EU approach to regulating AI and therefore artificial intelligence driven alternative dispute resolution is effective, reasonable and yet flexible enough that we can see the real benefits of AI systems in a artificial intelligence driven alternative dispute resolution.

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