



EUROPEAN
COMMISSION

Brussels, 17.10.2023
SWD(2023) 335 final

PART 1/2

COMMISSION STAFF WORKING DOCUMENT
IMPACT ASSESSMENT REPORT

Accompanying the document

**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 final} - {SEC(2023) 347 final} - {SWD(2023) 334 final} -
{SWD(2023) 337 final}

Table of Contents

| | | |
|------|---|-----|
| 1. | INTRODUCTION: POLITICAL AND LEGAL CONTEXT | 3 |
| 2. | PROBLEM DEFINITION | 5 |
| 2.1. | What are the problem drivers? | 6 |
| 2.2. | What are the problems? | 14 |
| 2.3. | How will the problem evolve? | 22 |
| 3. | WHY SHOULD THE EU ACT? | 24 |
| 3.1. | Legal basis | 24 |
| 3.2. | Subsidiarity: Necessity of EU action..... | 24 |
| 3.3. | Subsidiarity: Added value of EU action | 24 |
| 4. | OBJECTIVES: WHAT IS TO BE ACHIEVED? | 25 |
| 4.1. | General objectives | 25 |
| 4.2. | Specific objectives | 25 |
| 5. | WHAT ARE THE AVAILABLE POLICY OPTIONS? | 26 |
| 5.1. | What is the baseline from which options are assessed? | 26 |
| 5.2. | Description of the policy options | 28 |
| 5.3. | Options discarded at an early stage | 32 |
| 6. | WHAT ARE THE IMPACTS OF THE POLICY OPTIONS? | 33 |
| 7. | HOW DO THE OPTIONS COMPARE? | 45 |
| 8. | PREFERRED OPTION | 46 |
| 8.1. | REFIT (simplification and improved efficiency) | 47 |
| 8.2. | Application of the ‘one in, one out’ approach | 47 |
| 9. | HOW WILL ACTUAL IMPACTS BE MONITORED AND EVALUATED?..... | 47 |
| | ANNEX 1: PROCEDURAL INFORMATION | 49 |
| | ANNEX 2: SYNOPSIS REPORT: STAKEHOLDER CONSULTATION | 52 |
| | ANNEX 3: WHO IS AFFECTED AND HOW? | 62 |
| | ANNEX 4: ANALYTICAL METHODS | 64 |
| | ANNEX 5: COMPETITIVENESS CHECK | 109 |
| | ANNEX 6: PERFORMANCE OF THE ODR PLATFORM | 110 |

Glossary

| Term or acronym | Meaning or definition |
|----------------------|--|
| ADR | Alternative Dispute Resolution |
| AI | Artificial Intelligence |
| B2C | Business to Consumer |
| C2C | Consumer to Consumer |
| CFREU | Charter of Fundamental Rights of the European Union |
| CJEU | Court of Justice of the European Union |
| COM | European Commission |
| CPC | Consumer Protection Cooperation |
| Dark patterns | Practices that materially distort or impair, either on purpose or in effect, the ability of recipients of the service to make autonomous and informed choices or decisions |
| DSA | Digital Services Act |
| ECC Net | European Consumer Centres Network |
| EEA | European Economic Area |
| EU | European Union |
| EUR | Euro |
| FTE | Full-Time Equivalent |
| GDP | Gross Domestic Product |
| GDPR | General Data Protection Regulation |
| HICP | Harmonised Index of Consumer Prices |
| IA | Impact Assessment |
| IoT | Internet of Things |
| IT | Information Technology |
| JRC | Joint Research Centre |
| MS | Member State |
| NCA | National Competent Authority |
| ODR | Online Dispute Resolution |
| PODR | Private Online Dispute Resolution |
| Sweep | Concerted investigations of consumer markets through simultaneous coordinated control actions to check compliance with, or to detect infringements of, Union laws that protect consumers' interests. |
| TEU | Treaty on European Union |
| TFEU | Treaty on the Functioning of the European Union |
| UCPD | Unfair Commercial Practices Directive |
| UK | United Kingdom |
| USD | United States Dollar |

1. INTRODUCTION: POLITICAL AND LEGAL CONTEXT

Digitalisation of consumer markets took an unprecedented leap amidst the COVID-19 pandemic, with constantly evolving business models and emerging commercial practices making it increasingly challenging to maintain fair digital markets for consumers and a level playing field for businesses.

The EU has developed a comprehensive legal framework to attain its objective to ensure a high level of consumer protection across the single market pursuant to Article 169 of the Treaty on the Functioning of the European Union. As a result, EU consumers enjoy a wide spectrum of rights affording protection to their economic interests and safety, while businesses can operate cross-border without having to adapt their commercial practices to different sets of national rules.

However, for consumers and traders to benefit fully from the harmonization of consumer legislation, the latter needs to be strongly and equally enforced across the EU. An effective enforcement of consumer law is geared to boost legal certainty, increase consumer confidence, fuel consumption and stimulate economic growth.

The enforcement of consumer legislation rests on two complementary pillars: a) private enforcement, whereby consumers harmed by infringements seek to get redress before a court or through an out-of-court settlement, either individually or as a group; and b) public enforcement, which is carried out mainly by public authorities seeking to protect the collective interest of consumers by removing bad practices from the market and sanctioning the perpetrators. This impact assessment concerns Alternative Dispute Resolution (ADR) schemes to which consumers may refer their disputes with a trader in a simple, fast and low-cost alternative to judicial proceedings.

The strengthening of private enforcement through the facilitation of out-of-court consumer redress has long been an objective of EU consumer policy. In its Single Market Act¹ of 2011, the Commission identified legislation on ADR as one of the levers needed to boost growth, strengthen consumer confidence and make progress towards completing the single market. Thus, in 2013, the European Parliament and the Council adopted both the Directive 2013/11/EU on alternative dispute resolution for consumer disputes (“ADR Directive”). At the same time, in order to promote ADR processes for online markets, they adopted the Regulation (EU) No 524/2013 on online dispute resolution (“ODR”) which provides a messaging tool run by the European Commission (the ODR platform).

The ADR Directive aims to ensure that consumers within the EU have access to high-quality ADR processes to resolve their contractual disputes arising from the sale of goods or services by traders established in the single market. It provides for the availability of ADR processes for all types of domestic and cross-border consumer disputes, ensuring that ADR procedures within the EU meet the same minimum quality standards, and it requires Member States to monitor the performance of ADR entities. In order to increase consumer awareness and promote the use of ADR, the Directive

¹ Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions - Single Market Act: twelve levers to boost growth and strengthen confidence "Working together to create new growth".

also mandates that traders inform their customers of the possibility to settle their dispute out-of-court.

To facilitate the use of ADR by consumers, the ODR Regulation establishes an online dispute resolution platform ('ODR platform') which provides a means for consumers who seek to resolve a dispute related to an online cross-border purchase to contact a trader and propose to start an ADR procedure (in some Member States, traders can also use it to contact consumers). Launched in January 2016, the platform is merely an interactive messaging application available in all 24 official languages of the EU, it does however not provide dispute resolution. In the absence of a reply by the trader, the request made by the consumer is closed after 30 days. Its use is restricted to consumer residing or online businesses established within the Union. The Regulation mandates that all online traders provide an easily accessible link to the ODR platform on their websites, as well as a dedicated email address, even if they have no intention to use this system.

In 2019, the Commission adopted a report on the implementation of the ADR Directive and ODR Regulation, which revealed that the Directive had led to increased coverage of consumer markets by ADR entities throughout the EU². However, the report also identified that consumer and business uptake of ADR procedures was still lagging behind in some sectors and Member States.

Recent data provided by national competent authorities in early 2022³, as well as targeted consultations conducted by the Commission suggest that there is still room for improvements and that the issues highlighted in the 2019 report persist. The evaluation of the ADR Directive conducted in 2023 (see annex 6) confirms the need for its strengthening.

Most stakeholders have identified several factors that hinder the use of ADR schemes, including the lack of awareness and understanding of ADR by consumers, low engagement by traders, gaps in ADR coverage in certain member states, high costs and complexity of ADR procedures, limited use of ADR in cross-border contexts, and barriers for vulnerable consumers. At the same time, the complexity of consumer disputes has evolved significantly since the adoption of the ADR Directive. In particular, online markets are influencing consumer decision-making to a great extent. These markets are characterised by a growing number of intermediary services, the increasing presence of non-EU traders and the spread of sophisticated techniques used by online traders to manipulate consumers' transactional decisions and influence all their purchases through advertising that is sometimes difficult to recognise as such.

The anticipated rise of consumer detriment stemming from unfair digital commercial practices in the coming years is expected to drive more demand for fast, affordable and effective out-of-court resolution schemes. However, in the absence of an ADR framework that is well-suited to the digital age, many consumers may be forced to either rely on unregulated private online dispute resolution systems established by online intermediaries or forego claiming their rights in low-value disputes.

² 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) 425 final.

³ Information gathering for assisting the Commission in complying with its obligation under Article 26 ("reporting") of the ADR Directive and Article 21 ("reporting") of the ODR Regulation. Study to be published together with this impact assessment in the second half of 2023.

Based on the conclusions drawn from the accompanying evaluation and application report, which the Commission services prepared in accordance with Article 20(6) of the Directive, this impact assessment aims to examine specific interventions that can address the major shortcomings of the Directive and increase consumers' access to effective redress in the single market.

2. PROBLEM DEFINITION

When the Commission adopted its proposal for an ADR Directive at the end of 2011, the total value of e-commerce sales in the EU was EUR 312 billion, representing 2% of the GDP of the Union.⁴ In only 10 years, e-commerce rose to EUR 518 billion, accounting for 4% of the GDP in 2021.⁵ These numbers illustrate the magnitude of the digital transformation that consumers markets have undergone. The last decade has also witnessed the surge of data-driven digital advertising and the raise of online intermediaries, which have intervened on the traditional B2C contractual relationships, increasing the complexity of consumer disputes. In digital markets, consumers should be able to obtain redress for issues explicitly related to the contract concluded with a trader but also for damages resulting from the unfairness of pre-contractual information or other breach of their rights under EU consumer law.

The growth of e-commerce has also brought about a rise in transactions with traders established outside the EU, with one in every eight EU citizens now buying goods and services from non-EU traders every year.⁶ This statistic underscores the importance of the availability of ADR procedures for disputes with third-country traders, which are currently excluded from the scope of the Directive. Moreover, the ADR framework is proving weak in delivering effective redress for disputes related to cross-border shopping. Given that approximately one in five European citizens makes purchases from traders established in a different Member State on an annual basis, the insufficient uptake of ADR for cross-border disputes may undermine consumer trust and intra-Union trade.

While lacking viable redress solution for disputes arising from online transactions in cross-border contexts, consumers are increasingly turning to private online dispute resolution (PODR) systems run by online marketplaces. These in-house solutions can provide an efficient way to settle disputes between consumers and traders, but, unlike quality-certified ADR entities, they are not subject to any regulatory requirements. This often leaves the enforcement of consumer rights in the hands of a few private actors, without any guarantee of fair treatment for consumers or traders. In addition to all these challenges, the engagement in ADR by consumers and traders, despite a steady increase since the adoption of the Directive, remains unsatisfactorily low.⁷ Consumers are still not sufficiently aware of the existence and/or the benefits of ADR, while traders often remain inactive

⁴ 2012 data, <https://ecommerce-europe.eu/press-item/european-e-commerce-to-reach-e-312-billion-in-2012-19-growth/>, both e-commerce sales and GDP include UK.

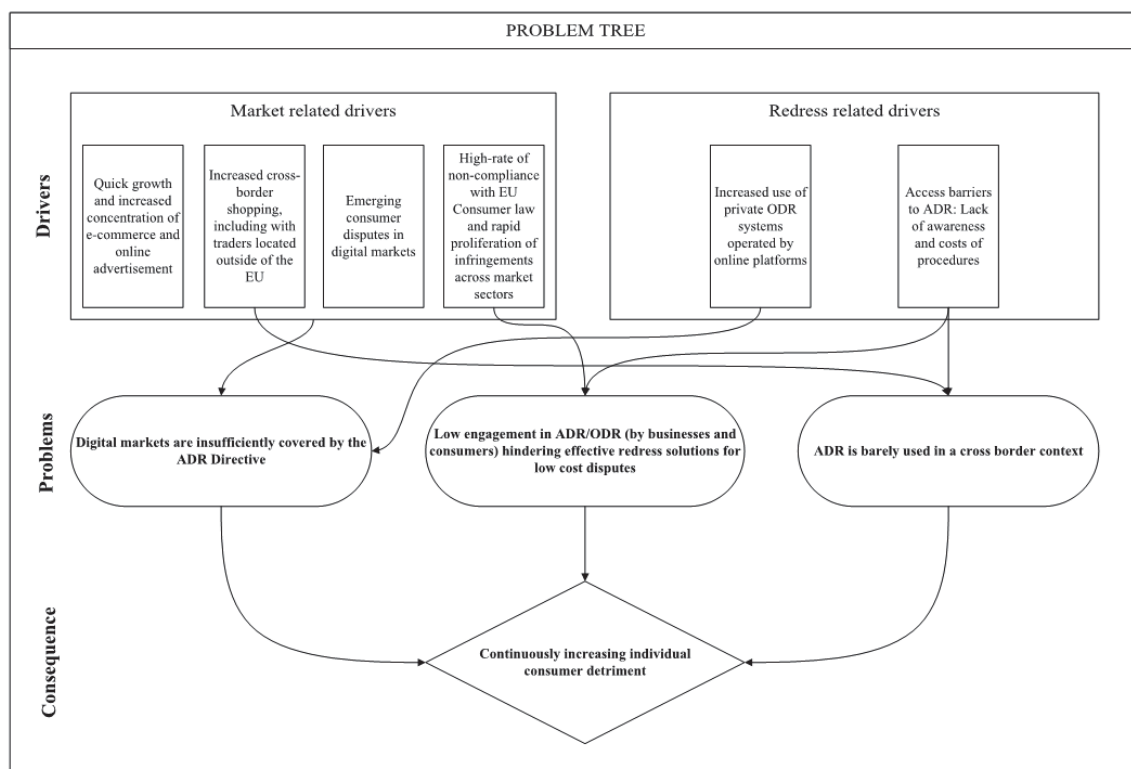
⁵ [2021-European-E-commerce-Report-LIGHT-VERSION.pdf](https://ec.europa.eu/e-commerce-report-light-version.pdf) (ecommerce-europe.eu).

⁶ Eurostat, Internet purchases - origin of sellers (2020 onwards), https://ec.europa.eu/eurostat/databrowser/view/ISOC_EC_IBOS_custom_3007818/default/table?lang=en. Online data code: ISOC_EC_IBOS

⁷ Only 180.000 consumer disputes are referred to ADR entities on an annual basis. Data available on: Information gathering for assisting the Commission in complying with its obligation under Article 26 ("reporting") of the ADR Directive and Article 21 ("reporting") of the ODR Regulation (to be published in the second half of 2023).

when faced with requests to settle a dispute out-of-court. As a result, the ADR framework has yet to reach its full potential.

This section examines the main drivers and megatrends that have contributed to the current problems of the ADR framework, and further analyses these issues in their multifaceted dimensions.



2.1. What are the problem drivers?

MEGATRENDS AND MARKET RELATED DRIVERS

Quick growth and increased concentration of e-commerce and online advertisement

The expansion of e-commerce has been ongoing for several years, however, the COVID-19 pandemic and related lockdowns have resulted in an exponential acceleration of its growth. The information presented in the box below demonstrates that this trend is stable and it is unlikely that there will be a return to the pre-pandemic rates.

Box: Key data on the evolution of digital markets in the EU

From +19% in Denmark up to +44% in Spain, consumers shopped online more often due to the pandemic in 2020.⁸ The share of enterprises' turnover on e-commerce went from 16% in 2016 to 20% in 2021 in the EU; for large enterprises alone, it went from 22% in 2016 to 27% in 2021.⁹ The contribution of e-commerce sales to the European Union's GDP (i.e. e-GDP), rose from 2.5% in 2017 to 4% in 2021.¹⁰ In the EU, e-commerce marketplaces generated EUR 115.4 billion in 2020 and experienced growth to reach an estimated range of EUR 120 – EUR 150 billion in 2021.¹¹

The growth of e-commerce is driven by a number of global megatrends. According to the JRC, by 2030, the middle class, also referred to as the consumer class, is expected to reach 4.8 billion people worldwide, i.e. 1.3 billion more people with increased purchasing power compared to today.¹² The enlargement of the consumer base, combined with a widespread access to the Internet by 5.3 billion people (66% of the world population)¹³ and a widespread ownership of mobile phones by three quarters of individuals aged 10 and above¹⁴, is set to further spur the pervasiveness of online shopping. Fuelled by growing consumption and increased hyperconnectivity, global e-commerce, which amounted to USD 4.25 trillion in 2014, is expected to reach USD 7.39 trillion in 2025¹⁵ (more than the values of the GDPs of France and Germany combined), representing an increase of 74%. Over the same period, global retail trade is predicted to increase by only 34%¹⁶. As a result, the market share of e-commerce in retail trade is expected to rise by 1 percentage point per year, and growth rate is anticipated to persist or even accelerate in the coming years.

In 2021, the average percentage of internet users in the EU who purchased goods or services at least once during the year was 74%, up from 63% recorded five years prior. Over the period 2016-2021, national disparities in e-shopping have been levelled out, largely due to the rapid acceleration of e-commerce growth fuelled by the pandemic.¹⁷ The shift towards online shopping has further reinforced the existing markets concentration of online retail and marketplace businesses. In April 2021, the most visited online trader worldwide - Amazon – recorded 5.2 billion visits, while the second most visited trader – eBay – had 1.7 billion visits. In comparison, the 10th ranked trader, China's Pinduoduo, had only 242 million visits and the 80th-ranked trader, Denmark's dba, stopped

⁸ PostNord. "Share of respondents in selected European countries who shopped online more often due to the coronavirus pandemic in 2020 and 2021." Chart. November 12, 2021. Statista. Accessed January 10, 2023. <https://www.statista.com/statistics/1189076/covid-19-e-commerce-growth-europe-country/>.

⁹ Eurostat, Share of enterprises' turnover on e-commerce - %, <https://ec.europa.eu/eurostat/databrowser/view/tin00110/default/table?lang=en>. Online data code: TIN00110.

¹⁰ 2021 European E-Commerce Report, [2021-European-E-commerce-Report-LIGHT-VERSION.pdf](https://ec.europa.eu/e-commerce-report/2021-European-E-commerce-Report-LIGHT-VERSION.pdf) ([ecommerce-europe.eu](https://ec.europa.eu/e-commerce-report/)).

¹¹ CBCommerce (2021), "Top-100 cross-border marketplaces Europe, 2nd edition", available at: <https://www.cbcommerce.eu/press-releases/second-edition-of-the-top-100-cross-border-marketplaces-europe-an-annual-analysis-of-the-best-global-cross-border-platforms/> and Ecommerce News (2021), "Europe: online marketplaces sales €120 billion", available at: <https://ecommercenews.eu/europe-online-marketplaces-sales-e120-billion/>.

¹² Knowledge for policy, Growing consumption, https://knowledge4policy.ec.europa.eu/growing-consumerism_en.

¹³ This number refers to the proportion of individuals who used the internet from any location in the last three months – whether the access was made via a fixed or mobile network: <https://datahub.itu.int/data/?e=701&c=&i=11624>.

¹⁴ International Telecommunication Union (ITU), Mobile phone ownership: <https://www.itu.int/itu-d/reports/statistics/2022/11/24/ff22-mobile-phone-ownership/>.

¹⁵ eMarketer. "Retail e-commerce sales worldwide from 2014 to 2026 (in billion U.S. dollars)." Chart. July 29, 2022. Statista. Accessed January 10, 2023. <https://www.statista.com/statistics/379046/worldwide-retail-e-commerce-sales/>.

¹⁶ Estimate based on eMarketer. "Total retail sales worldwide from 2020 to 2025 (in trillion U.S. dollars)." Chart. February 3, 2022. Statista. Accessed January 11, 2023. <https://www.statista.com/statistics/443522/global-retail-sales/>.

¹⁷ Eurostat, Online data code: isoc_ec_ibuy and isoc_ec_ib20.

at 13.5 million.¹⁸ The market concentration, which is clearly illustrated by these figures, is largely due to the features of core platform services such as network effects, strong economies of scale and availability of a vast amount of data, allowing large online traders and marketplace to play the role of gatekeepers in digital markets. The concentration of the market in terms of website visits is similar in the EU.

Furthermore, in 2021, the expenditure in digital advertising worldwide accounted for 65% of the total ad revenue, and estimates indicate a continued growth trend, reaching 70% by 2025. This entails an increase from USD 500 billion to USD 690 billion,¹⁹ with an estimated annual growth of 1 percentage point.²⁰ Similarly to e-commerce, the advertisement market is also highly concentrated: in 2022, Google and Meta alone accounted for about 53% of global spending in advertising, up from 46% that was recorded in 2016.²¹ Amazon and TikTok have also seen a rapid rise in their global advertising share while traditional media advertising continues to experience a constant decline in share.²²

Increased cross-border shopping, including with traders located outside the EU

In 2021, cross-border e-commerce in the EU showed significant growth, with 18% of EU citizens engaging in transactions with traders located in another Member State, and a higher rate of 32% among regular e-commerce participants, i.e. consumers who purchased goods/services online in the 3 months prior to the date of the data collection. The increased rate of cross-border shopping also encompasses transactions between consumers and traders established outside of the EU, with 12% of EU citizens and one in five regular e-shoppers making purchases from non-EU traders.²³ This amounts to an estimated 45.5 million EU citizens participating in cross-border e-commerce with traders located outside the EU.

Consumer disputes in digital markets going beyond contractual issues

The increasing pervasiveness of e-commerce and digital advertising has resulted in consumer detriment going much beyond the typical issue of non-conformity of products and services. In digital markets, a significant share of the harm suffered by consumers stems from misleading advertising or lack of pre-contractual information. These practices expose their vulnerabilities and exploit their cognitive biases, leading them to make transactional decisions that go against their best interests. The chart below illustrates the main unfair commercial practices experienced by consumers.

¹⁸ WebRetailer, <https://www.webretailer.com/b/online-marketplaces/>.

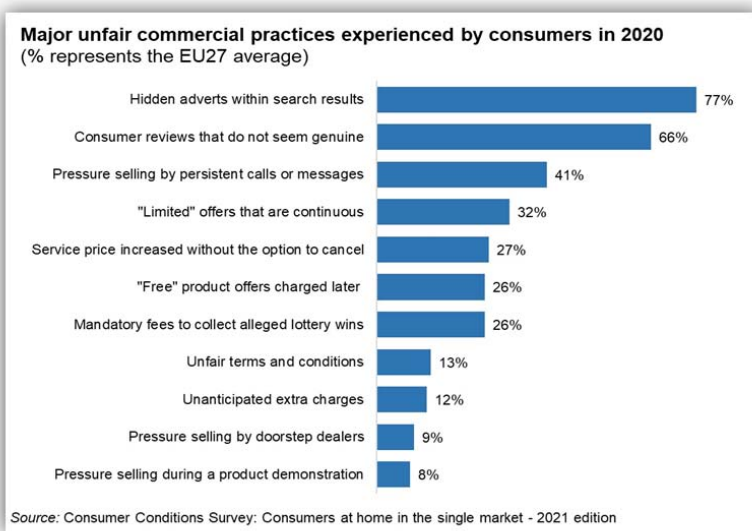
¹⁹ GroupM. "Advertising media owners revenue worldwide from 2014 to 2027 (in billion U.S. dollars)." Chart. December 5, 2022. Statista. Accessed January 10, 2023. <https://www.statista.com/statistics/236943/global-advertising-spending/>.

²⁰ GroupM. "Share of digital in advertising revenue worldwide from 2019 to 2027." Chart. December 5, 2022. Statista. Accessed January 10, 2023. <https://www.statista.com/statistics/375008/share-digital-ad-spend-worldwide/>

²¹ eMarketer, <https://www.emarketer.com/content/duopoly-still-rules-global-digital-ad-market-alibaba-amazon-on-prowl>.

²² For further information see here: [Google and Meta's Advertising Dominance Fades as TikTok, Streamers Emerge - WSJ](#)

²³ Eurostat, Internet purchases - origin of sellers (2020 onwards), https://ec.europa.eu/eurostat/databrowser/view/ISOC_EC_IBOS_custom_3007818/default/table?lang=en. Online data code: ISOC_EC_IBOS.



For example, when booking holiday accommodations through an online intermediary, consumers rely on the platform's information to make informed decisions. However, they may be influenced by deceptive practices (e.g. dark patterns such as fake time-limited offers), resulting in decisions that are not in their best interest. The current scope of the ADR Directive only covers paid transactions, leaving it unclear whether the consumer can seek out-of-court redress and who is responsible for the dispute (the platform or the trader). The complexity of the situation may discourage the consumer from pursuing a dispute without specific assistance.²⁴

Significant rate of non-compliance with EU consumer law

The growth of e-commerce and digital advertising inevitably exposes consumers to an increasing number of unfair commercial practices online. As of 2021, 37% of EU e-shoppers reported experiencing a recent problem with their online shopping other than slow delivery.²⁵ Additionally, when searching for or purchasing products online, at least two out of three consumers have encountered unfair commercial practices such as hidden advertisements or consumer reviews that did not appear authentic.²⁶

The findings of the sweeps²⁷ conducted by national consumer protection authorities under the coordination of the Commission provide a clear picture on the rate of non-compliance with consumer law across digital markets. In 2022, authorities screened 16.000 products sold online and discovered that 43% of Black Friday discounts were misleading as they offered no real price advantage to consumers. In 2021, authorities found that among 223 major websites, 55%

²⁴ See Table "Willingness to take up ADR by claim value and procedure length; cumulated" under Problem 2 below.

²⁵ E-commerce statistics for individuals, https://ec.europa.eu/eurostat/statistics-explained/index.php?title=E-commerce_statistics_for_individuals#Purchasing_online_and_problems_encountered.

²⁶ See Consumer Condition Survey: Consumers at home in the single market – 2021 edition, available here: https://commission.europa.eu/system/files/2021-03/ccs_ppt_120321_final.pdf.

²⁷ "Sweeps" are coordinated screenings of e-commerce websites carried out by enforcement authorities simultaneously and in a coordinated manner under the CPC Regulation with the purpose of identifying and addressing infringements of EU consumer law within a given business sector. https://commission.europa.eu/live-work-travel-eu/consumer-rights-and-complaints/enforcement-consumer-protection/sweeps_en

potentially violated the UCPD²⁸ by publishing misleading information on the reliability of consumer reviews. In the same year, 42 out of 118 websites were flagged for contravening EU consumer law due to their inconsistency with the relevant information requirements governing online advertising of consumer credit. Furthermore, in the two sweeps conducted in 2020 on misleading sustainability claims and COVID-19 related claims, authorities found that almost half of the green claims reviewed were potentially false or deceptive, and that 206 out of 269 monitored websites misleadingly promoted products in the context of the pandemic.

Thus, based on the available data published on sweeps,²⁹ it is estimated that 30% to 77% of e-commerce websites across various categories may engage in practices that could infringe consumers' rights. As e-commerce continues to expand, the number of such problematic websites is likely to increase in the near future, putting further pressure on the ability of the existing ADR entities and private redress mechanisms offered by certain online intermediaries to effectively address the increasing non-compliance.

REDRESS-RELATED DRIVERS

In addition to the market-related drivers and megatrends described above, this report identifies three problem drivers related to the architecture of the current ADR framework and the development of PODR systems by online marketplaces.

Access barriers to ADR: Lack of awareness and costs of procedures

a) Lack of awareness

The report on the application of the ADR Directive, which was adopted by the Commission in 2019³⁰, emphasized that the primary obstacle preventing consumers and traders from engaging in ADR is their lack of awareness regarding the existence of ADR procedures and the benefits they may provide. Within the EU, 43% of retailers are unaware of the existence of ADR as a means to resolve disputes with consumers,³¹ while 8% are aware but not willing to use it, and 13% report being aware but not finding a suitable ADR in their sector.³² The Consumer Conditions Survey of 2021³³ revealed that only 5% of EU consumers who encountered a problem reported it to an ADR

²⁸ Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive').

²⁹ The data is available here: https://commission.europa.eu/live-work-travel-eu/consumer-rights-and-complaints/enforcement-consumer-protection/sweeps_en

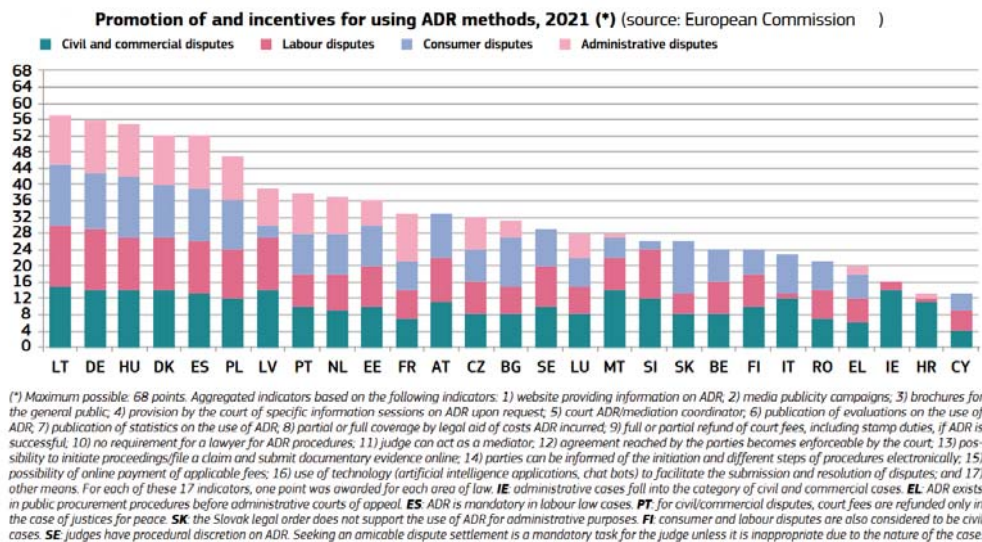
³⁰ See Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the application of Directive 2013/11/EU of the European Parliament and of the Council on alternative dispute resolution for consumer disputes and Regulation (EU) No 524/2013 of the European Parliament and of the Council on online dispute resolution for consumer disputes. COM(2019) 425 final: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2019:425:FIN>

³¹ This figure accounts for all retailers, including those operating in sectors in which consumer disputes are unlikely to arise.

³² Consumer Conditions Scoreboard - Consumers at home in the Single Market, 2019, [consumers-conditions-scoreboard-2019_pdf_en.pdf](https://ec.europa.eu/consumers-conditions-scoreboard-2019_pdf_en.pdf) (europa.eu).

³³ https://commission.europa.eu/system/files/2021-03/ccs_ppt_120321_final.pdf.

body, which accounts for roughly 2,250,000 consumers annually.³⁴ This figure represents a mere 0.75% of the total number of consumers, and only 15% of those who were dissatisfied with their retailer or service provider's handling of their complaint.³⁵ Awareness remains low in spite of the numerous awareness-raising³⁶ initiatives launched at national level. The 2022 EU Justice Scoreboard³⁷ indicates that most Member States already promote and incentivize the use of ADR for consumer disputes, making supplementary investment in awareness-raising unlikely to produce significant positive effects.



b) Costs of ADR procedures

The ADR Directive stipulates that consumers should only face a nominal cost when accessing an ADR procedure, which is appropriate given that the system is intended to provide a low-cost alternative for in-court dispute resolution. However, the issue of financing such systems remains a central concern. Various financing models have been implemented across Member States, ranging from full public funding of an administrative office, such as an ombudsman, to complete privatization, where businesses bear all costs.³⁸ The following paragraphs present a breakdown of the costs that are associated with the stakeholders involved.

³⁴ 15% of the total number of consumers (i.e. 300 million consumers in the EU above 15 years old) experienced a problem and took action to solve it, out of which 5% brought the matter to an ADR body.

³⁵ On the other hand, available estimates regarding ADR in the UK suggest that only 28% of consumers in regulated sectors and 16% in non-regulated sectors are aware of its existence. (Resolving consumer disputes - Alternative Dispute Resolution and the Court System, 2018, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/698442/Final_report_-_Resolving_consumer_disputes.pdf).

³⁶ Out of all capacity-building grants awarded to ADR entities by the Commission since 2018, 41 listed communications (i.e. awareness-raising) as a primary or secondary action.

³⁷ https://commission.europa.eu/system/files/2022-05/eu_justice_scoreboard_2022.pdf.

³⁸ There are several models of funding for ADR: A) public funding: in 22 countries there are some ADR entities that are funded by the state budget. In some cases, these ADR entities are set up by law; B) private funding: in 22 countries there are ADR entities that are self-funded (such as CZ), or professionals or federations of professionals (such as FR), which are thus indirectly funded by the traders through the membership fees. C) Mixed funding: in 14 countries, there are entities that are privately funded but also receive public money. Further information on ADR funding models can be

ADR entities: Costs for ADR entities in the EU vary and largely depend on several factors, such as the size and location of the entities, as well as the types of disputes they are responsible for resolving. For example, in 2020, the Office of the Arbiter for Financial Services, one of the eight Maltese ADR entities, incurred a total cost of EUR 571,592 for staff and operations. In comparison, the Insurance Ombudsman, one of the fifteen Belgian ADR entities, spent EUR 1,732,857 in the same year.³⁹ These figures exclude translation costs for cross-border proceedings, which were identified as a significant challenge by Member States.⁴⁰ In terms of the costs incurred per dispute, the Spanish national competent authority for ADR has estimated a minimum of EUR 150 for a case, independent of whether the ADR entity is public or private. On the other hand, Lithuania, which operates under a public funding model, has provided precise insights into the average cost per dispute, thanks to the performance audit of consumer protection conducted by the State Audit Office in 2019.⁴¹ According to the auditors' calculations, one dispute costs on average about EUR 300 to the Lithuanian ADR entities. Based on Lithuania's average cost per dispute, and a conservative estimate of at least 180,000 ADR disputes every year (figure concerning only 23 EEA Countries), the total cost of ADR in the EU can be inferred to be approximately EUR 54 million per year. This represents a significant amount that would require financing by either public funds or the parties involved in the dispute. Given that only three Member States (Hungary, Lithuania, and Latvia) rely exclusively on a public funding model for the ADR entities operating in their territory,⁴² the cost of ADR services must generally be borne by traders and, to some extent, by consumers.

Traders: With the exception of countries where ADR is fully publicly funded, traders in the EU are required to cover at least part of the administrative costs associated with participating in ADR procedures. The financing models can vary: in some cases, traders may be members of trade associations, in which case the costs of ADR are typically included in their membership fee and do not entail significant additional costs. However, if traders are not members of such associations, they are responsible for covering the costs of each ADR proceeding, which can vary depending on the number of disputes referred to ADR entities. These participation fees can range from an average of EUR 10 (Czechia) to EUR 100 (Ireland).⁴³ In addition, traders have to bear the costs of participating to dispute resolution, including the financial and human resources needed for dealing with a dispute, such as human resources and time spent submitting information and evidence. At times, they may also incur legal advice costs.

Consumers: To enhance accessibility to ADR for consumers, Member States have made efforts to either provide free procedures or charge only a nominal fee. Of the 25 Member States that

found in the Information gathering for assisting the Commission in complying with its obligation under Article 26 ("reporting") of the ADR Directive and Article 21 ("reporting") of the ODR Regulation.

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Aukšciausioji audito institucija, Veiklos auditas – Ar užtikrinama vartotojų teisių apsauga (Performance audit – Is the protection of consumer rights ensured?), 2019, point 76, available at: <https://www.valstybeskontrole.lt/LT/Product/23852>.

⁴² Information gathering for assisting the Commission in complying with its obligation under Article 26 ("reporting") of the ADR Directive and Article 21 ("reporting") of the ODR Regulation.

⁴³ Ibid.

responded to the survey question on consumer fees,⁴⁴ 12 Member States reported that ADR is always free-of-charge for consumers across all ADR entities in their country. In the remaining 13 Member States, some ADR entities charge a fee, with significant variation: while in 10 Member States, the fees charged do not exceed EUR 70, in a few Member States, fees can range from EUR 100 to EUR 300 or even up to EUR 1000 in certain cases, depending on the value of the dispute (as detailed in the table below). However, when assessing costs for consumers, it is crucial to consider the effort and time required from them, as well as potential expenses that may arise, such as the support of legal advisors, as well as translation costs for cross-border disputes.

Overview of fees charged to consumers by ADR entities

| Range of fees charged | Member States |
|-----------------------|--|
| Free of charge | AT, BG, EE, FI, FR, EL, HU, LV ⁴⁵ , LT, LU, RO, ES |
| Up to EUR 10 | SK (fee ranges from EUR 0 to EUR 5) CZ, PT ⁴⁶ , SE (fee ranges from EUR 0 to EUR 10), |
| Up to EUR 50 | SI (fee ranges from EUR 0 to EUR 20); DE (fee ranges from EUR 0 to EUR 30) and IE (fee ranges from EUR 0 to EUR 50) |
| Up to EUR 75 | DK (fee ranges from EUR 0 to EUR 54); IE (fee ranges from EUR 0 to EUR 60) and HR (fee charged is EUR 66) |
| Over EUR 100 | NL (fee ranges from EUR 0 to EUR 127.5); BE (fee ranges from EUR 0 to EUR 332 ⁴⁷); CY (fee ranges from EUR 20 to EUR 1000 ⁴⁸). |

Increased use of private online dispute resolution systems operated by online marketplaces

The rapid growth of e-commerce, described in the section above on ‘market-related drivers’, has led to a steady increase in consumer disputes related to electronic transactions. In order to bolster consumer confidence in online marketplaces,⁴⁹ a growing number of platform operators has started offering private online dispute resolution (PODR) services to their customers. In the event of a problem related to a third-party B2C or C2C transaction, the marketplace operator takes on the role of a mediator to facilitate a resolution between the concerned parties. The cost of this service is typically included in the intermediation fees charged directly or indirectly to the final consumer.

⁴⁴ Information gathering for assisting the Commission in complying with its obligation under Article 26 (“reporting”) of the ADR Directive and Article 21 (“reporting”) of the ODR Regulation.

⁴⁵ However, two ADR bodies request to pay security deposit, which is refunded, if the claim is justified.

⁴⁶ This is the case for two ADR entities in PT. For two other ADR entities, the ADR competent authority noted the fee depends on the value of the damage.

⁴⁷ Only four of the 15 entities ask the consumer to pay a fee.

⁴⁸ The cost reported by CY is EUR 640 based on an 8-hour conciliation or mediation procedure. For every additional hour of conciliation or mediation, there is an additional fee of EUR 40 per hour for consumers regarding disputes of amounts over EUR 10 000 – the maximum amount paid by a consumer is EUR 800. For arbitration, the maximum amount paid by a consumer is EUR 1,000. See European Commission, Cyprus Consumer Center for Alternative Dispute Resolution, procedure, A. Fees details, available at: <https://ec.europa.eu/consumers/odr/main/?event=main.adr.show2>.

⁴⁹ Online marketplaces are here understood and defined pursuant to Article 2(17) of the Consumer Rights Directive as ‘service[s] using software, including a website, part of a website or an application, operated by or on behalf of a trader which allow[s] consumers to conclude distance contracts with other traders or consumers. The Directive is available here: [EUR-Lex - 02011L0083-20220528 - EN - EUR-Lex \(europa.eu\)](#)

According to data from 2020, 12% of EU consumers who experienced a problem with a trader sought to resolve it directly through a PODR, while only 5% chose to resort to an ADR procedure and 2% pursued legal action before a national court.⁵⁰ Given that - in the same year - 9% of EU consumers experienced issues with online purchases,⁵¹ it is estimated that at least 3.2 million consumers used a PODR mechanism. This indicates that PODR services have become an integral part of e-commerce for one in every hundred consumers. PODR services are designed to offer a seamless and user-friendly solution to consumers, eliminating the need for them to search for suitable dispute resolution mechanisms elsewhere. These systems should guide users to a quick resolution and entail minimal transaction costs, as most of the necessary data on the parties and the purchase is already available to the system.⁵² The box below provides further information on how the eBay PODR system works, as one of the most used such system.

Case study: The eBay PODR system⁵³

The eBay Resolution Center, one of the world's largest dispute resolution systems, processes more than 60 million disputes annually worldwide, offering assistance to parties experiencing issues related to their online transactions. The most frequently reported disputes involve non-receipt of an item or lack of conformity thereof. Before reporting a dispute, buyers and sellers are encouraged to engage in direct communication to seek an amicable resolution. The Resolution Center operates through a process of problem diagnosis, followed by automated negotiation utilizing algorithms that are purportedly designed to ensure efficient resolution of disputes. This process leads to 90% of amicable resolution. By analysing the data obtained through the resolution process, eBay has also said it has been able assess and address in a systemic manner common sources of problems.⁵⁴

2.2. What are the problems?

Problem 1: The ADR Directive is not fit for digital markets

The digital transformation of EU consumer markets has presented new opportunities, but also new challenges that can have a negative impact on consumers' economic interests and raise questions about the suitability of the ADR Directive for the digital age. The latest developments in the field of big data analysis and AI have raised concerns about how digital technologies could be used to manipulate consumer decision-making against their best interests. At the same time, the rise of the platform economy has highlighted the critical role that online marketplaces can play in the conclusion of distance contracts between traders and consumers by designing digital 'choice architectures' that influence consumers' transactional decisions. Moreover, thanks to the borderless nature of digital technologies, European consumers can now be easily targeted by traders located outside the EU.

⁵⁰ Recommendations from academic research regarding future needs of the EU framework of the consumer Alternative Dispute Resolution (ADR). https://commission.europa.eu/system/files/2022-08/adr_report_final.pdf.

⁵¹ Market Monitoring Survey, [mms-overview-report-19-20_en.pdf \(europa.eu\)](https://commission.europa.eu/system/files/2022-08/mms-overview-report-19-20_en.pdf).

⁵² An increasing number of PODR systems offered by online marketplaces use automated decision-making.

⁵³ Case study: the use of AI in ODR, annex to Information gathering for assisting the Commission in complying with its obligation under Article 26 ("reporting") of the ADR Directive and Article 21 ("reporting") of the ODR Regulation.

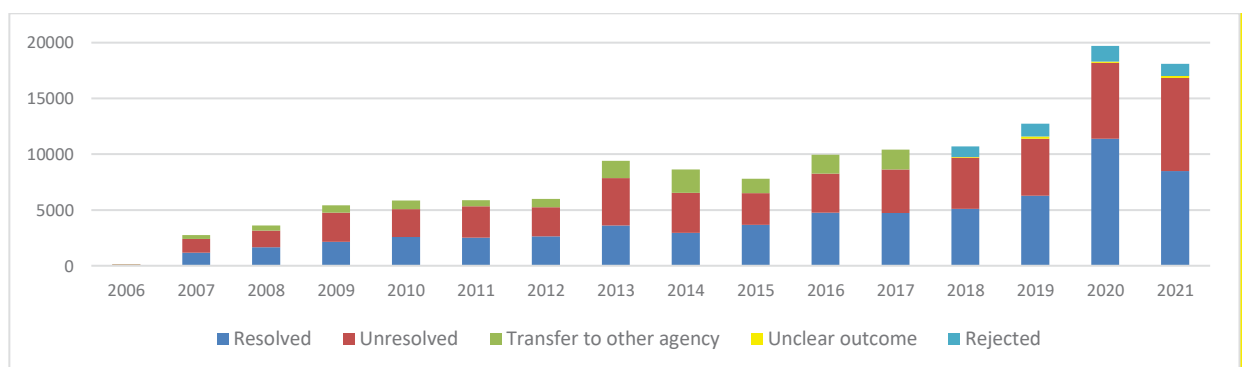
⁵⁴ O Rabinovich-Einy and E Katsh, (2021), Artificial Intelligence and the Future of Dispute Resolution: The Age of AI-DR, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3830033.

Novel forms of consumer disputes are therefore arising, but there is a risk that they may not fall within the remit of the ADR Directive as transposed by Member States or as interpreted by the ADR bodies themselves. In this respect, it is important to note that Article 2 of the Directive only covers “procedures for the out-of-court resolution of domestic and cross-border disputes concerning **contractual obligations** stemming from sales contracts or service contracts between a **trader established in the Union** and a consumer resident in the Union”. As a result, EU consumers are not assured that they can rely on the ADR Framework to obtain quick and affordable redress solutions for disputes related to: a) harm they suffered as a consequence of an unfair commercial practice perpetrated by an online retailer or a platform that is not linked directly to the performance of the contract; b) traders established outside of the EU. Another aspect that the ADR Framework does not cover, but which has become a central feature in the present out-of-court dispute resolution landscape, concerns the provision of PODR systems by online marketplaces. These systems have become increasingly popular among consumers and are being used more and more often to settle disputes out-of-court. Considering their significance, excluding them from the purview of the Directive could threaten its goal of broadening EU consumers’ access to justice. The subsection below explains more in detail the various dimensions of this problem.

A) Risk of being excluded from out-of-court redress for issues not explicitly related to a contract

According to data from ECCs, which mainly deal with issues related to e-commerce, the share of resolved complaints thanks to their intervention is on par with the share of unresolved complaints, which shows that there is a number of issues that online traders refuse to settle amicably but could be resolved through a fair ADR process or in-court should consumers be encouraged to continue fighting for their case.

Number of online consumer complaints to ECCs and their outcomes, EU-27 (2006-2021)



Source: ECC Network.⁵⁵ *Note: In 2018, the data collection system was changed allowing for insights that are more detailed. In particular, the category “Rejected” was added and insights provided into what happened to the complaints transferred to other agencies. Hence, from 2018 onwards, complaints resolved or unresolved by other agencies are included in the respective general category; rejected complaints and complaints with unclear outcome are presented.*

⁵⁵ Case study on e-commerce, from Information gathering for assisting the Commission in complying with its obligations under Article 40 (“reporting”) of Regulation (EU) 2017/2394 on Consumer Protection Cooperation.

Many of these issues are related to the provision of misleading pre-contractual information or lack thereof,⁵⁶ as well as to situations where the identity of the contractual counterparty is unclear. In cases where consumers encounter issues with transactions facilitated by intermediaries, their access to ADR is often contingent upon the intermediary's business model. For example, if the intermediary charges consumers a service fee, such as is the case with Airbnb, a for-payment contractual relationship between the intermediary and the consumer exists, and the dispute clearly qualifies for ADR. Conversely, if the intermediary does not collect a service fee from the consumer, as in the case with Booking.com, it will depend on the rules applied by the ADR entity whether the dispute can be referred to it. Despite case-law clarifying the intermediary's liability in relation to their intermediary services,⁵⁷ national rules or entities own rules may still limit consumer access to ADR due to the current wording of the Directive.

b) Lack of out-of-court redress solutions for disputes between European consumers and non-EU traders

In recent years, there has been a significant increase in infringements reported by consumers regarding their commercial interactions with traders established outside the EU. According to the ECCs' query handling system, 5-7% of complaints received concern non-EU traders.⁵⁸ However, this data is not entirely representative as ECCs were not established to handle complaints of this nature and therefore consumers aware of this limitation will not contact ECCs. Furthermore, an EU-wide survey conducted in 2020 confirmed that issues with orders or purchases outside the EU were more prevalent than those within the EU, with 41% of non-EU online purchases being problematic compared to 23% within the EU.⁵⁹ However, the ADR Directive only covers disputes between **“trader established in the Union** and a consumer resident in the Union”. As a result, many consumers who have engaged with a company established outside the EU territory, even if the same company has addressed its activity to European consumers, are not entitled to refer a dispute with that trader to an ADR entity under the Directive. Consequently, they have no option but to initiate an ordinary judicial proceeding to protect their interests, a process that is significantly more costly and time-consuming. .

c) Lack of quality of PODR systems

As mentioned above, an increasing number of online marketplaces, including major players such as Amazon, Airbnb and eBay, are operating PODR systems to help consumers and third-party traders (or other consumers in case of peer-to-peer platforms) resolve disputes that arise on their platform. Similarly to ADR, PODR represents a useful alternative to in-court litigation because it is quick and typically free of additional charges, as the cost is included in the service fees collected by

⁵⁶ ECC data (see Annex 4) on 2022 EU complaints' indicate that complaints not related to the performance of the contract, such as lack of confirmation, other misleading actions or omissions, refusal to sell/supply product or discrimination, unfair and aggressive commercial practices, together account for 4.47% of all complaints.

⁵⁷ See judgement of 24 February 2022, *Tiketa*, C-536/20M, EU:C:2022:112, paragraph 36.

⁵⁸ Information gathering for assisting the Commission in complying with its obligation under Article 26 (“reporting”) of the ADR Directive and Article 21 (“reporting”) of the ODR Regulation.

⁵⁹ Frustrated consumers rather than happy shoppers: Online marketplaces – consumer' real-life experiences (https://www.vzbv.de/sites/default/files/2022-03/20-12-14%20Evidenzsammlung%20Online-Marktpl%20A4tze_EN_final.pdf) & Information gathering for assisting the Commission in complying with its obligation under Article 26 (“reporting”) of the ADR Directive and Article 21 (“reporting”) of the ODR Regulation.

online intermediaries. However, unlike ADR, PODR is not subject to any specific legal requirements. Consequently, there are several questions concerning a) the qualification and independence of the natural persons in charge of PODR; b) the availability of clear and understandable information that consumers need before deciding to engage in a PODR procedure; c) the fairness of the PODR process and the enforceability of the final outcome on third-party traders or other consumers.

In order to gather data on the quality standards of the PODR systems, a screening of nine major online platforms operating within the EU was conducted, using the requirements set out in the ADR Directive as a benchmark.⁶⁰ The screening was performed based on a structured checklist that aimed to assess various elements such as the transparency of the PODR systems (e.g. are the dispute resolution rules clearly disclosed), their accessibility (e.g. can consumers submit complaint in any language, and at any time? or are there restrictions?), and fairness (e.g. are the natural persons in charge impartial? Can consumers be represented?). The results of the screening showed that correspondence with the ADR Directive quality criteria ranged from 42% for the system with lowest information provided to consumers to 88% for the system with the most complete information. Thus, while millions of consumers rely on PODRs offered by online marketplaces, none of these systems meet the full quality standards which the ADR Directives affords consumers in the context of ADR Directive.

Problem 2: Low engagement in ADR among businesses and consumers

Insufficient participation in ADR procedures by traders and consumers constitutes one of the main shortcomings of the ADR framework. Despite several initiatives at both national and EU level aimed at promoting the use of ADR, traders' and consumers' engagement in ADR procedures remains persistently low. While a general lack of awareness is a contributing factor, any policy interventions designed to increase engagement in ADR must first identify the root causes of this low participation and provide the appropriate incentives to consumers and traders. Detailed examination of this issue is presented in the following subsections.

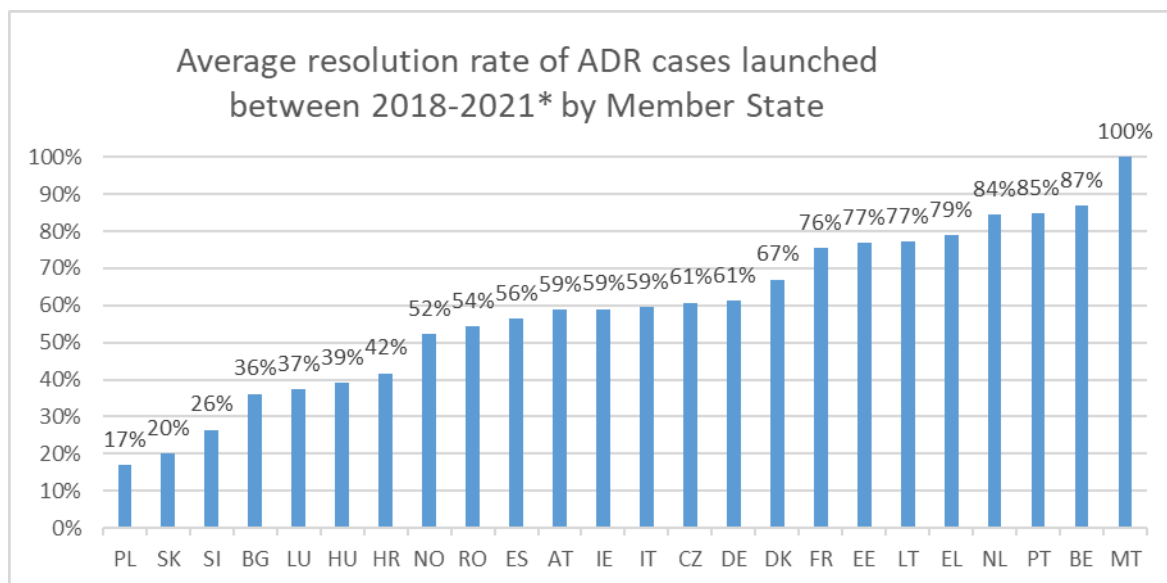
a) Low engagement in ADR by businesses

As noted above, approximately 1.95 million EU consumers are willing to file complaints with an ADR body annually. Nevertheless, the number of cases brought to ADR between 2018 and 2021 ranged from approximately 500 in Croatia to over 264,000 in Germany. In 2020, due to a surge of cases arising from various problems linked to the COVID Crisis, Germany recorded the highest number of disputes launched in a given year, with over 80,000 cases, followed by Italy with over 69,000 cases and France with 67,000 cases. The total number of eligible disputes launched by ADR schemes in Europe is about 300,000 per year⁶¹, meaning that only 8% of those with a complaint would benefit from ADR.

⁶⁰ Details in Annex 4.

⁶¹ Information gathering for assisting the Commission in complying with its obligation under Article 26 ("reporting") of the ADR Directive and Article 21 ("reporting") of the ODR Regulation.

In the same period, the average proportion of ADR cases where the trader accepted to participate and which was resolved, ranged from just 17% to 100%, as shown in the chart below.⁶² The majority of Member States boast a rate of traders' acceptance of above 50% (16 Member States). Based on this fact, it can be **assumed that on average, 60% of businesses accept to engage in ADR**, resulting in 180,000 disputes resolved by an ADR entity in Europe every year.⁶³ As regards the remaining 120,000 disputes (out of the 300,000 cases requested by consumers), data from the EU ODR platform indicate that **approximately 20% are explicitly refused while the remainder is left without answer from the business**. By applying this ratio to the number of potential disputes, it emerges that 96,000 consumers would receive no response from traders while 24,000 disputes would be explicitly refused. **This high rate of non-response generates frustration and undermines consumer trust in the system, while also resulting in unnecessary costs for ADR entities.**



Note: Data for 3 Member States only covered some of the years: BE (based on data 2018-2021), FR (based on data 2019 and 2020), and RO (based on data 2018-2020).

The Directive does not address the issue of whether traders' participation in ADR procedures should be mandatory or voluntary; instead, it leaves that decision to the individual Member States or sector-specific EU legislation.⁶⁴ The available data⁶⁵ indicate that in eleven Member States, participation is entirely voluntary, while in six others it is compulsory. In seven Member States, trader participation is mandatory only in specific sectors, and in four, it is mandatory only in specific situations. In cases where participation is voluntary, it is based on the goodwill of traders or the promotion of it made by trade associations, and therefore relies on their understanding and appreciation of its benefits.

⁶² Ibid.

⁶³ Value in line with the figure for DE and IT which are the countries with most potential disputes.

⁶⁴ See, for example, Article 26(3) of the Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity, which states that 'The participation of electricity undertakings in out-of-court dispute settlement mechanisms for household customers shall be mandatory unless the Member State demonstrates to the Commission that other mechanisms are equally effective'

⁶⁵ Information gathering for assisting the Commission in complying with its obligation under Article 26 ("reporting") of the ADR Directive and Article 21 ("reporting") of the ODR Regulation.

Regarding information to consumers, under Article 13 of the ADR Directive, traders are required to inform consumers about their relevant ADR entity/entities, present this information in an accessible manner, and specify their intentions or not to use ADR entities when a dispute could not be settled directly with the consumer. It should be noted that the aforementioned obligation to disclose information on ADR carries an associated **cost of approximately EUR 310 per trader**.⁶⁶ However, according to the available data on the low use of ADR by consumers when the dispute has not been solved amicably, this information obligation does not seem to be of assistance since traders can indicate that they will not participate, thus discouraging further steps by consumers. This underscores the need to consider whether a more efficient approach to increase engagement among consumers and traders could be adopted through the present intervention.

b) Low engagement in ADR by consumers

Low consumer engagement is another key factor contributing to the insufficient uptake of ADR in the EU. To tackle this issue, it is important to understand what causes consumers' disengagement. The table below⁶⁷ illustrates how consumers would use ADR based on the value of their claim and the expected duration of the ADR procedure. The figures in the table are cumulative: for example, the 23% in the first column represents the total number of consumers who would use ADR if the issue could be resolved strictly within one week, those who would use it if the issue could be resolved within one month, and so on, up to those who would use it regardless of the time it takes.⁶⁸

⁶⁶ The Impact assessment accompanying the proposal for the current ADR Directive estimated the cost of compliance with individual traders to amount to EUR 254. By adjusting this number to the inflation rate over the period 2011 – 2023, (EUR 254 x 1.2217), the current cost of compliance for traders is EUR 310. For further info, see Impact Assessment accompanying the document Proposal for a Directive of the European Parliament and of the Council on Alternative Dispute Resolution for consumer disputes (Directive on consumer ADR) and Proposal for a Regulation of the European Parliament and of the Council on Online Dispute Resolution for consumer disputes (Regulation on consumer ODR) {COM(2011) 793 final} {SEC(2011) 1409 final}.

⁶⁷ Behavioural study on disclosure of ADR information to consumers by traders and ADR entities. N = 4,050 in Austria, Italy, Poland and Sweden. Amounts in EUR were converted for local currencies and adjusted for cost of living where appropriate. Data are weighted. Percentages may not add up to 100% due to rounding.

⁶⁸ Hence 100% = drop the case + use ADR if the issue can be resolved within 1 week + go to court directly + don't know. The table does not provide an accurate figure for the consumers who will go to court in case the issue can be resolved in more than a week. For those cases, it is assumed that the percentage of consumers going immediately to court would be proportionally higher.

Willingness to take up ADR by claim value and procedure length; cumulated

| | Value of the claim | | | | | | |
|---|--------------------|---------------|----------------|------------------|--------------------|---------------------|-----------|
| | Less than €50 | €50 - €200 | €200 - €500 | €500 - €1,000 | €1,000 - €5,000 | €5,000 - €10,000 | > €10,000 |
| Drop the case and lose the money | 58% | 17% | 8% | 4% | 3% | 3% | 4% |
| Use ADR if the issue can be resolved within 1 week | 23% | 67% | 77% | 79% | 76% | 70% | 39% |
| Use ADR if the issue can be resolved within 1 month | 16% | 32% | 61% | 68% | 69% | 62% | 32% |
| Use ADR if the issue can be resolved within 6 months | 11% | 21% | 29% | 50% | 53% | 52% | 26% |
| Use ADR if the issue can be resolved within 1 year | 8% | 14% | 18% | 21% | 39% | 43% | 21% |
| Use ADR irrespective of the time it takes | 5% | 9% | 11% | 12% | 15% | 31% | 15% |
| Go to court directly | 3% | 4% | 4% | 6% | 10% | 17% | 43% |
| Don't know | 16% | 12% | 10% | 11% | 11% | 11% | 14% |

Note: N = 4,050. Amounts in EUR were converted for local currencies and adjusted for cost of living where appropriate. Data are weighted.

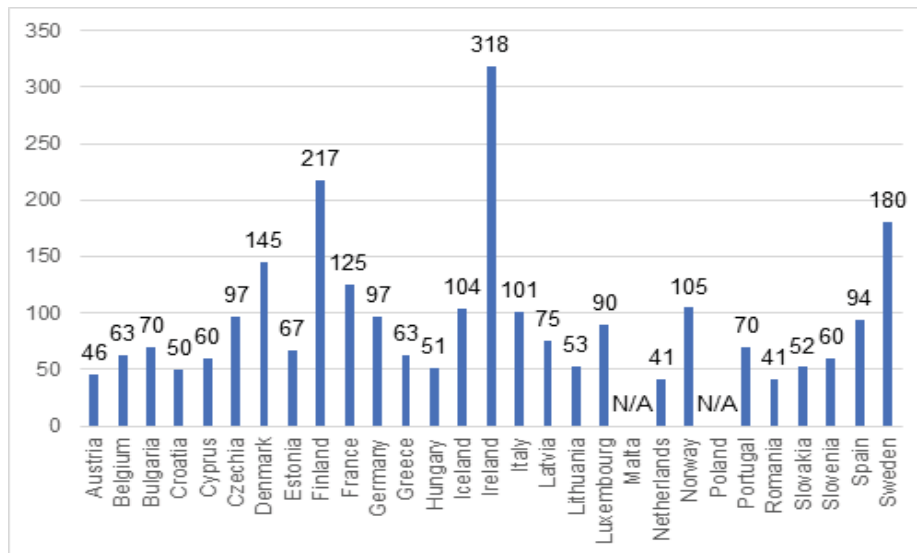
Coloured rows indicate the rows with cumulative percentages, adding the equivalent percentage of itself and all subsequent *blue* rows.

Percentages do not add to 100% since some cells are cumulated within the table.

The table indicates that the speed of the ADR process is a critical factor for consumers in determining whether to engage in ADR. For claims between EUR 1 and EUR 10,000, consumers are increasingly willing to use ADR, even if the process takes more than a year. If ADR proceedings were very fast - up to one week -, almost three quarters of consumers would always use it for claims between EUR 50 and EUR 10,000. Similarly, if ADR proceedings were fast - up to one month – two thirds of consumers would always use it for claims between EUR 200 and EUR 10,000. In other words, if ADR proceedings are slow, a majority of consumers with claims below EUR 200 is likely to give up seeking redress. Although this may represent an acceptable loss for an individual consumer, when cumulated at the EU level, it results in several million claims not pursued per year. In the absence of redress opportunities for low-value claims, dishonest businesses are incentivised to continue pursuing dubious commercial practices that lead to significant losses for the collective interests of consumers. The chart below displays the average duration of an ADR dispute in the EEA,⁶⁹ ranging from 41 days in the Netherlands and Romania to 318 days in Ireland. According to the above mentioned data, it is likely that the disputes brought to an ADR entity are those worth waiting for between one and six months, i.e. claims exceeding EUR 200. For smaller claims, ADR may be too slow. Based on data from the EU ODR Platform, the average claim value is EUR 185.

Average duration (in days) of an ADR dispute in the EEA⁶⁹

⁶⁹ Information gathering for assisting the Commission in complying with its obligation under Article 26 (“reporting”) of the ADR Directive and Article 21 (“reporting”) of the ODR Regulation, online survey of ADR competent authorities conducted for the study (N=29).



Failure of the EU ODR Platform to increase consumer and business engagement in ADR

Under the ODR Regulation, the Commission had to establish the “ODR platform” as a messaging tool to promote the resolution of B2C disputes arising from electronic transactions via ADR procedures. The objective was to increase the trust in cross-border online shopping by promoting the easiness to solve disputes out of court. The ODR platform offers consumers a system to contact traders to propose to them to participate to an ADR procedure. It is not a complaint-handling tool in itself, but it is meant to facilitate communication between consumers and traders to agree and then choose a relevant ADR body.

However, the Platform is clearly not achieving its intended objectives. Data shows that while it attracts a relatively high number of visitors⁷⁰, only **very few consumers use it to contact a trader and request an ADR procedure: just over 13 000 complaints were made EU-wide in 2021**. The vast majority of these requests (80%) remain un-attended by traders who chose to remain silent while about 20% of traders explicitly refuse. 99% of the cases are therefore automatically closed after 30 days. The number of claims that is eventually resolved thanks to the platform mechanism is extremely low: only 1% of the 13 000 requests (169 in 2021). This low usage indicates that **the ODR platform is not encouraging traders to participate to an ADR process and also** does not corresponds to the needs of consumers in digital markets as only a minority of visitors try to use it. For more information on the ODR platform functioning and issues please see Annex 7.

Problem 3: ADR is not sufficiently used in a cross-border context

Data obtained from the EU ODR platform indicate that while requests to initiate an ADR procedure are almost equally split between national and cross-border cases, 63% of refusals made by traders occurred in cross-border cases.⁷¹ This finding suggests that **traders are more prone to use ADR**

⁷⁰ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52019DC0425&from=EN>. Since its launch, the platform has attracted more than 8.5 million visitors in total. .

⁷¹ On a very large sample of nearly 19,500 total refusals from traders.

for purely domestic disputes, highlighting a gap that should be addressed to strengthen access to cross-border ADR.

The **complex legal and organizational context of cross-border ADR** is the primary factor accounting for its lower uptake as compared to domestic ADR. In this respect, it must be noted that while under the Brussels I Regulation⁷² consumers have the possibility to submit disputes over a consumer contract with an EU-established trader before the courts of their Member State of domicile, the ADR Directive does not provide any specific geographical mechanism for cross-border ADR disputes. However, since the ADR Directive requires the Member State in which the trader is established to ensure that any consumer disputes involving that trader can be submitted to a quality-certified ADR entity, there is always an ADR entity competent to deal with a consumer dispute in the Member State where the trader is established largely influencing which ADR entity will be most likely preferred by the trader and condition to its participation.

This situation has the potential of reducing the effectiveness of ADR procedures in two respects:

First, while the ADR Directive requires every ADR entity to accept cross-border cases, it can be more cumbersome for a consumer to interact with an ADR entity established in another Member State as the latter typically works in the national language(s) of that Member State. National authorities have confirmed that language is a major obstacle, citing, for example, application forms and rules of procedures that are often only available in the national language of the ADR entity.⁷³

Furthermore, ADR entities are more prone to mistakes where they operate an ADR procedure that requires them to take into account consumer law as applied in other Member State. An additional element of complexity for ADR entities lies in the imposition of a solution on the trader established in a different Member State. Under Article 11 of the ADR Directive, compulsory outcomes of ADR proceedings should be in line with the law of the consumer's Member State of residence.⁷⁴ At the end of the day, in practice, ADR entities tend to apply only their national law.⁷⁵

2.3. How will the problem evolve?

The failure to intervene with effective measures will not only allow the identified problems to persist, but will most likely exacerbate them, thereby further undermining the individual and collective interests of consumers. The continued growth of e-commerce is likely to be accompanied by an increase in unfair commercial practices notably in relation to pre-contractual stages with the use, for example, of manipulative interfaces, which could become progressively even more pervasive and subtle due to technological development. **The overall number of potential consumer disputes is thus expected to significantly increase.** As a consequence, only a fraction

⁷² Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast), OJ L 351, 20.12.2012, p. 1–32.

⁷³ Information gathering for assisting the Commission in complying with its obligation under Article 26 (“reporting”) of the ADR Directive and Article 21 (“reporting”) of the ODR Regulation.

⁷⁴ Member States’ consumer laws to a large extent are based on fully harmonised EU instruments and the relevant mandatory rules will therefore be the same in most cases.

⁷⁵ As evidenced by the Information gathering for assisting the Commission in complying with its obligation under Article 26 (“reporting”) of the ADR Directive and Article 21 (“reporting”) of the ODR Regulation.

of these disputes, i.e. those of clear contractual nature, risk being accepted for ADR. Over time, this will prevent an ever-growing number of consumers from seeking out-of-court redress. In the meantime, PODR systems offered and managed by online marketplaces will become increasingly popular while remaining exempted from any regulatory requirements. This means that **the enforcement of consumer rights online by the consumers themselves will depend more and more on systems provided by online marketplaces.**

The growth of e-commerce will also lead to an **increase in cross-border shopping** within the EU and between the EU and third countries. However, consumers will continue to be unable to resolve their disputes in relation to most of these purchases. This will potentially fuel consumer mistrust in cross-border shopping and hinder the development of the digital single market. Moreover, the current levels of engagement in ADR, which are already unsatisfactory, will stagnate and eventually decrease due to a widespread awareness of the limitations of ADR, thereby leading to the discouragement of consumers. As a result, consumers may explore other methods to resolve their disputes, including PODR systems and private claims management companies, which usually collect a fee of up to 30% of the consumer claim⁷⁶, or alternatively, may opt to give up on enforcing their rights altogether.

The accumulation of these problems eventually results in an increase of consumer detriment. The extent of this detriment can be measured by considering the consumer harm that is strictly related to the missed opportunity of not using ADR. By taking into account the 120,000 eligible disputes⁷⁷ (i.e. filed by a consumer and confirmed by an ADR entity, as per data transmitted by ADR Competent authorities to the Commission in 2022) that are not accepted by businesses on a yearly basis, the maximum consumer detriment amounts to EUR 22.2 million per year.⁷⁸ In addition to this, the detriment of consumers who brought a matter to the ADR entity which, for various reasons, was not deemed eligible (for example in relation to extra-contractual claims) must also be taken into account. This group comprises 1.95 million consumers,⁷⁹ and the potential additional detriment stemming from the fact that they cannot settle their dispute through ADR amounts to EUR 361 million per year⁸⁰, for a total annual detriment **of EUR 383 million.**

In the baseline scenario described below, these figures are taken as reference to estimate the total detriment that consumers may suffer in the next 10 years.

⁷⁶ Claims management companies are very popular for instance in the area of passenger rights, where they assist passengers affected by a cancellation, long delay or denied boarding to claim compensation under Regulation 261/2004 with a fee of usually 30% of the amount claimed, due only in case of success.

⁷⁷ See annex IV for further information. In a nutshell, this number is the result of the difference between the number of eligible disputes (300 000) and the number of disputes that are actually referred to ADR entities (180 000).

⁷⁸ 120,000 x EUR 185 which is an estimate of the average amount brought as dispute to an ADR based on data from the EU ODR Platform. This number is realistic as EUR 121 is the average value of a retail purchase, but, consumers tend to use ADR above a certain minimum amount which corresponds to the higher end of the statistical distribution (source: average value of purchases on retail shops, <https://www.wolfgangdigital.com/kpi-2019>).

⁷⁹ As seen above in the problem definition, under 'access barrier to ADR', the number of consumers potentially willing to refer a dispute to an ADR entity is 2,250,000. By assuming that each consumer is involved in one dispute per year, and by taking into account that the current average number of eligible ADR disputes per year is only 300,000, it is possible to estimate the number of consumers who could be willing to use ADR but do not do so because the disputes is deemed ineligible or for other reasons.

⁸⁰ 1,950,000 x EUR 185.

3. WHY SHOULD THE EU ACT?

3.1. Legal basis

Insofar as the EU intervention is likely to take the form of a legislative proposal, the legal basis depends on the primary objective and scope of the proposal. The existing legislative intervention in the field of consumer ADR has as its main objective the improvement of the functioning of the single market through the approximation of the provisions laid down by law, regulation or administrative action governing out-of-court dispute resolution schemes in the Member States, i.e. Article 114 of the TFEU. By proposing amendments to the current legal framework on consumer ADR, this initiative falls under the same legal basis and also contributes to ensure a high level of consumer protection in the EU in line with Article 169 of the TFEU.

As the EU has no exclusive competence in the field of consumer protection, which is instead an area of shared competence pursuant to Art. 4(2)(f) of the TFEU, due regard must be given to the principle of subsidiarity enshrined in Article 5(3) of the TEU.

3.2. Subsidiarity: Necessity of EU action

In accordance with the subsidiarity principle laid down in Article 5(3) TEU, action at EU level shall only be taken when the aims envisaged cannot be achieved sufficiently by Member States alone, and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the EU.

The rapid evolution of digital markets, coupled with the rise of new business models and commercial practices, poses a new set of challenges for consumers shopping online. Given the borderless nature of digital technologies, the emergence of new types of threats concerns EU consumers irrespective of their country of residence. While the ADR Directive's minimum harmonization approach affords Member States broad discretion in adapting their national ADR frameworks to the new challenges of the digital age, the unilateral exercise of such discretion in order to adapt to the new challenges posed by digital markets could lead to potential divergences in their intervention. This, in turn, could result in unequal effectiveness of out-of-court procedures for consumers depending on their member State of residence, lower level of consumer protection in general and more difficulties for businesses to settle disputes when operating across the single market.

3.3. Subsidiarity: Added value of EU action

Action taken at the EU level will ensure that the obstacles hindering consumer ADR in cross-border contexts are consistently removed across the EU. This will have the effect of enhancing the confidence of consumers and traders in purchasing and selling across borders, thereby strengthening the smooth functioning of the internal market.

In addition, EU action will also ensure that Member States coordinate their responses to the challenges posed by the digital transformation and act consistently in adopting measures to provide effective redress systems suited to the current complexity of consumer disputes. This will increase the level of protection afforded to consumers in the digital single market.

Furthermore, action taken at EU level to uniformly increase consumer and trader engagement in ADR across the Union will **reduce consumer detriment** and enable consumers to make significant

savings in both offline and online transactions, which may be used to purchase additional goods and services or better adapt to rising inflation. Finally, by providing traders with comparable opportunities to settle their disputes with consumers regardless of their Member State of establishment, EU action will reduce litigation costs and **foster a level playing field for businesses**.

4. OBJECTIVES: WHAT IS TO BE ACHIEVED?

4.1. General objectives

The general objective of this intervention is to ensure the proper functioning of the retail single market and achieve a high level of consumer protection by enabling consumers and traders to resolve their disputes in an efficient and effective manner, irrespective of their country of residence or establishment.

4.2. Specific objectives

Make ADR fit for digital markets

The first specific objective of the intervention is to **ensure that ADR in the EU is fit for the digital age**. This is particularly important given the recent increasing trends in e-commerce and the emergence of new online business models. The aim is to ensure that ADR procedures are suitable for resolving disputes related to issues going beyond the mere provisions of contracts and thus covering the whole range of EU consumer rights. Furthermore, as digitalization has led to increased exposure of consumers to goods and services offered by traders established outside of the EU, the initiative seeks to provide consumers with the opportunity to refer their dispute to ADR bodies even where it concerns a trader established outside of the EU. This will reinforce the level playing field for traders and provide greater protection of consumer rights. Finally, with the rise of the platform economy, consumers have become increasingly reliant on PODR systems to resolve their disputes with third-party traders quickly. Thus, this intervention also aims to ensure that these PODR systems meet consistent quality standards that apply throughout the Union.

Improve consumers' and traders' engagement in ADR

As clearly stated in the 2019 Commission Report on the application of the ADR Directive and ODR Regulation, as well as in the evaluation of the ADR Directive annexed to this Impact Assessment, and the feedback provided by stakeholders on different occasions, one of the main challenges hindering the full effectiveness of the ADR framework is the low participation in ADR by both consumers and traders.⁸¹ Therefore, the second specific objective of this intervention is to address the root causes of this low uptake, namely the lack of confidence and poor understanding of ADR by consumers and traders, stemming from the perception that **procedures are long and cumbersome, possibly too costly and certainly not adapted to the quick customer journey** that consumers experience in digital markets.

Enhance cross-border ADR

⁸¹COM(2019) 425 final, page 10: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2019:425:FIN>

The third specific objective of this initiative is to **remove barriers hindering the use of ADR for cross-border disputes**, i.e. disputes where the consumer resides in a Member State different from the one where the trader is established.

5. WHAT ARE THE AVAILABLE POLICY OPTIONS?

5.1. What is the baseline from which options are assessed?

In the baseline scenario, the Commission refrains from proposing any amendments to the current legal framework and launching additional non-legislative initiatives. Thus, the ADR Directive remains unchanged, leaving Member States free to adapt their domestic ADR architectures to the aforementioned challenges as they see fit.

While the Directive narrowly defines consumer disputes as concerning “contractual obligations stemming from sales contracts or service contracts between a trader established in the Union and a consumer resident in the Union”, the number of potential disputes related to infringements of traders’ pre-contractual and extra-contractual obligations or committed by traders established outside the EU is set to increase due to the ongoing digital transformation. Such a narrowly defined scope will **prevent an ever-growing number of consumers harmed by unfair commercial practices from having access to quick redress opportunities**.

Consumer and trader **engagement in ADR is relatively low, and is expected to remain at current levels**. Disparities across the Member States in the use of out-of-court dispute resolution seen from data reported to the Commission as part of the evaluation annexed to this report will also persist. Likewise, the **use of ADR for cross-border disputes is not expected to increase, despite the anticipated growth of intra-EU shopping in the coming years**. In the absence of effective cross-border ADR, online marketplaces are likely to increasingly meet the need for dispute settlement options in cross-border scenarios by offering PODR systems to consumers. The industry will develop these systems with procedural rules and standards established independently. Alternatively, some Member States may decide to regulate these systems, further fragmenting access to fair dispute resolution systems across the EU.

While the ADR framework remains unchanged, new substantive laws will come into play, increasing and clarifying consumer rights (notably in relation to precontractual information) and this will be a motivation for consumers to seek to obtain the benefits of such rights.. For instance, following the 2019 amendment to the **Consumer Rights Directive**, the rules of this Directive apply to contracts where the trader provides digital content, and the consumer agrees to the use of their personal data (instead of paying a fee). However, given that the contractual disputes covered by the ADR Directive are linked to the payment of a monetary fee, consumers may not have a practical way of enforcing these new rights out-of-court. A similar risk could be anticipated also in relation to the forthcoming **Consumer Credit Directive**,⁸² which, once adopted, will provide consumers with a more robust set of information rights at the advertisement and pre-contractual stage. There is also the Commission’s proposal on Empowering consumers in the green transition⁸³ that is being finalised and is expected to increase the protection against misleading green claims made at the pre-

⁸² Proposal for a Directive of the European Parliament and of the Council on consumer credits: [EUR-Lex - 52021PC0347 - EN - EUR-Lex \(europa.eu\)](#)

⁸³ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0143>

contractual stage. In relation to all these new or clarified rights, **the enforcement of consumer rights through ADR is likely to be hindered** by the fact that the scope of the ADR Directive explicitly restricts disputes to those stemming from a contract.

The ADR Directive coexists with the recently adopted **Representative Action Directive (RAD)**⁸⁴, which enters into application in June 2023. The two frameworks are going to operate in parallel, as stated also in recital 27 of the ADR Directive, which affirms that ‘an effective system for collective claims and easy recourse to ADR should be complementary and they should not be mutually exclusive procedures’. ADR systems are aimed to rapidly solve single disputes so that consumers can get an immediate remedy to their problem. Collective redress cases aim to stop systemic breaches of consumer law by a trader and to provide remedies to all the consumers concerned. The scale of operation, the complexity of the legal elements and the timeframe of collective redress cases are not at all comparable or competing with ADR systems. Certainly, collective redress cases will cover a few cases that have been solved through an ADR, but for the vast majority of ADR cases it will never be possible for consumer associations to bring collective cases on all the instances.

Similarly, individual redress coexists with the activities of public authorities to ensure that businesses comply with applicable legislation. These activities aim first to obtain a high level of compliance by being deterrent notably through the threat of penalties. They are targeted at large cases harming the collective interest of consumers and search to stop unlawful behaviour but not to obtain redress for the consumers concerned. Public and private enforcement play different roles and are complementary to ensure that businesses respect consumer rights and repair the damages caused to consumers. An improvement of public enforcement in the future may be obtained however thanks to the review of the Consumer Protection Cooperation Regulation which is carried in parallel to the present initiative, however, this improvement should cover very large EU level cases but will leave unaffected a large part of the everyday practical problems that consumers face with the other businesses and will still require individual actions to obtain concrete remedies such as reimbursements for undue charges or not delivered goods.

Taking all these considerations into account, it could be estimated that without legislative intervention, over the next decade, consumers will continue suffering significant financial losses due to the growth of e-commerce and the simultaneous lack of effective ADR procedures. The detriment of EUR 383 million (as calculated in section 2.3 above) experienced by consumers annually is likely to increase. Assuming linear growth of e-commerce at a yearly rate of 1% from its current representation of 20% of total business turnover, the detriment is expected to increase proportionately each year. By applying a 3% standard discount factor to account for the present value of future money flows, and using a 10 year time horizon for the assessment of the impacts, it is estimated that the total consumer detriment over the next decade will amount to **EUR 3.4 billion** (present value).

The analysis of the baseline scenario took as reference period a horizon of 10 years. The same timeframe is used below for the assessment of the policy options, as it allows to examine in full their impacts on various stakeholders.

⁸⁴ Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers: [EUR-Lex - 32020L1828 - EN - EUR-Lex \(europa.eu\)](#)

5.2. Description of the policy options

This impact assessment report examines a number of policy measures that could achieve the specific objectives described in section 4.2. It should be noted that the measures may not all apply equally to all Member States as the ADR Directive is of minimum harmonisation. So certain measure may already exist in certain Member States or not be needed as some of the Member States have implemented stronger measures than required by the ADR Directive in their national context. These differences however mainly concern the Member States which have implemented an obligation for traders to participate to an ADR requested by a consumer and therefore the studied measures which aim to increase traders participation may not impact the situation in those Member States. For most of the other studied measures, however, they will apply equally to all Member States as they concern issues that apply in a similar manner across the Union. The below discussion will identify the instances where some differences may apply and therefore the expected impacts will not concern or less concern certain Member States.

In order to have sizeable impacts, the measures are grouped coherently into four alternative policy bundles/options differing from each other by the nature and the intensity of the intervention: **A) non-regulatory intervention; B) procedural and geographical scope amendments; C) substantive scope amendments with some additional obligations to traders D) architectural changes with increased harmonization.** Option A) consists of a set of non legislative measures aimed at addressing the above-mentioned problems without making any changes to the legal framework governing ADR. Option B) complements the non-legislative initiatives of Option A by providing Member States with some additional procedures to promote ADR including vis a vis non EU traders. Option C) comprises material scope amendments and the additional obligation for traders to reply to ADR entities while simplifying their general information obligations. Finally, option D) proposes a number of measures that would require Member States to make changes to their domestic ADR infrastructure.

It was considered that each of these four bundles constituted a feasible mix of measures capable of addressing the three objectives in a balanced manner in terms of the intrusiveness of the individual measures and of their complementarity. Another possible bundle could have been to extend the material scope of the Directive without imposing additional reply duties on traders. This bundle however would have created more expectations for consumers and more work for ADR entities without improving participation from traders. Alternatively, extending the material scope of the Directive and prescribing compulsory participation of traders without imposing certain architectural choices would have created the risks that certain existing ADR landscape could have been put under a lot of stress and would not be able to cope with the additional workload.

The table below provides an overview of the four policy options.

| | Option A Non-regulatory intervention | Option B Light-touch revision | Option C Targeted amendments | Option D Architectural changes and increased harmonization |
|--|---|--|---|---|
| Make ADR fit for digital markets | <ul style="list-style-type: none"> ❖ Maintain current scope and provide trainings to entities ❖ Work with online intermediaries to establish best practices / guidelines | <ul style="list-style-type: none"> ❖ Option A + ❖ Clarify inclusion of third-country traders | <ul style="list-style-type: none"> ❖ Widen material scope of ADR to include any dispute, including consumer extra-contractual disputes and disputes with third-country traders ❖ Introduce obligation for platforms that provide PODR to obtain self-certification attesting that they meet the quality criteria established by the Directive | <ul style="list-style-type: none"> ❖ MS to designate residual entity in charge of cross-border / digital disputes ❖ Extend quality criteria of ADR directive to platform's dispute resolution systems (under supervision and audits from ADR NCAs) |
| Increase consumers' and traders' engagement in ADR | <ul style="list-style-type: none"> ❖ Awareness-raising campaigns to promote ADR ❖ Clarify better the sectors where there is mandatory participation under national law | <ul style="list-style-type: none"> ❖ Allow national authorities to publicly disclose identity of retailers who do not engage in ADR ❖ Promote use of trust-marks for traders participating in ADR | <ul style="list-style-type: none"> ❖ Replace ODR platform with signposting tools ❖ Traders duty of reply to ADR entities, and removal of obligations to disclose information ❖ Allow bundling of similar cases | <ul style="list-style-type: none"> ❖ Replace ODR platform with signposting tools ❖ Oblige MS to have only one ADR body per retail sector, complemented by one residual ADR ❖ Harmonize ADR procedures ❖ Mandatory participation of traders in ADR procedures ❖ Allow bundling of similar cases |
| Facilitate cross-border ADR | <ul style="list-style-type: none"> ❖ Create a standardized, information template that ADR entities could use to provide clear information in different languages ❖ Adoption of AI tools for instant translation | <ul style="list-style-type: none"> ❖ Option A + ❖ Strengthen quality criteria to ensure that natural persons in charge of ADR are qualified for cross-border disputes (legal and linguistic expertise) | <ul style="list-style-type: none"> ❖ ECC to act as contact points to facilitate consumers' access to ADR entities for cross-border issues ❖ Provide self-certification mechanism for EU-level trade associations and other relevant bodies and allow them to set up cross-border dispute settlement systems | <ul style="list-style-type: none"> ❖ Establish EU mechanism for ADR cross-border complaints |

Policy Option A - Non-regulatory intervention

Policy Option A proposes a set of non-legislative measures aimed at supporting and facilitating the work of ADR entities as well as supporting the awareness and other publicity activities of competent authorities while calling on businesses to develop self regulatory actions. In particular, it proposes to:

- Increase support to capacity-building of ADR entities by providing ad-hoc trainings to the natural persons in charge of ADR, thereby improving their understanding and ability to handle consumer disputes arising online. Under this policy option, the Commission would also provide a platform where ADR entities could exchange best practices on dispute resolution in digital markets.
- Promote a self-regulatory approach for PODR services provided by online marketplaces. Under this approach, platforms providing dispute resolution services to their customers would be encouraged to adhere to common guidelines agreed upon at the EU level, with the objective of increasing transparency and providing consumer-friendly PODR procedures.
- Support awareness-raising campaigns of Member States by developing best practices guidance and interactive tools.
- Create standardized, easy-to-understand templates (e.g. complaint form, response form, additional information form, ADR outcome etc.) that ADR entities could use (on a voluntary basis) to handle cross-border disputes electronically. This includes supporting ADR entities to use machine translation for documents exchanged cross-border.

Policy Option B – Procedural and geographical scope revision

Policy Option B aims to propose minimal harmonisation procedural amendments to the existing EU ADR directive complemented by the non-legislative initiatives described under Policy Option A). Thus, this option proposes to:

- Introduce guiding rules on how to treat pre-contractual information in disputes relating to a digital contract in order to address problem 1 and improve the fitness to digital markets.
- Enable ADR entities to handle disputes between consumers and traders established outside of the EU.
- To enable ADR entities and national authorities to take some publicity measures, as they see fit, to ensure that consumers are incentivised to choose traders which engage positively in ADR, such as disclosing the identity of retailers who systematically refuse to engage in ADR procedures, promoting trust marks which include ADR participation. These measures aims to address problem 2 in improving engagement in ADR procedures
- Introduce guiding elements on how to handle cross-border disputes by ADR entities and thus allowing ADR entities to be more confident in taking up cross border cases.
- through the introduction of new procedures to implement the quality criteria in the Directive. so that the natural persons responsible for ADR possess the necessary expertise to deal with

consumer law in foreign jurisdiction and linguistic competences, including at least proficiency in English.

Policy Option C – Material scope amendments and new business obligations

Policy Option C) seeks to address the problems outlined above by amending a number of provisions in the Directive and adding new obligations for traders. It also assigns new responsibilities to entities that do not currently play a role under the Directive, namely market places which provide PODR and EU level trade associations. :

- Widen the material scope of the ADR Directive to cover any disputes between a trader and a consumer involving a breach of the consumer laws and thus covering all pre-contractual information requirements as well as transactions which include an exchange of personal data in consideration for the service provided. This would address problem 1 by ensuring that all digital transactions are covered including in relation to what happens at the pre-contractual stages and when there is no monetary payment. Traders established outside of the Union but targeting Union consumers would also be enabled to agree to an ADR request from a consumer as they have to respect consumer law. .
- Require online marketplaces that provide PODR services to settle disputes between traders and consumers operating on the platform to meet the quality standards expected by consumers from quality-certified ADR entities; establish a self-certification process whereby online marketplaces can show that their PODR services abide by high standards of fairness, legality and quality; establish regular review by the Commission of the documentation provided by online marketplaces.
- Replace the European ODR platform with new cost-effective signposting tools (e.g. a chat-bot) to guide consumers looking for ADR solutions to the appropriate ADR body for their dispute. Remove information obligations for those traders who decide not to use ADR procedures.
- Introduce a ‘duty of reply’ for traders who receive a notification of a new consumer dispute from an ADR entity; traders would be required to respond to the ADR entity within a specified deadline and indicate whether they intend to engage in ADR or not.
- Encourage bundling of cases when ADR entity receives similar cases, inform consumers that they can be handled together with others.
- Grant European Consumer Centres (ECCs) a new role to provide specialised assistance services to ADR entities with cross-border complaints; ECCs’ assistance would include helping consumers navigate ADR procedures and assisting ADR entities with questions related to the applicable law in other countries.
- Establish a mechanism where trade associations, upon providing a self-certification, are authorised to set up cross-border dispute settlement systems.

Policy Option D – Architectural changes and increased harmonization

Policy option D is the most ambitious among the options considered because it seeks to increase the level of harmonization of the Directive and intervene on the existing domestic ADR infrastructure in Member States. The following measures are suggested under Policy Option D:

- Extend the material scope of the Directive to all applicable consumer legislation as for option C)
- Require Member States to establish a residual ADR entity responsible for cross-border and digital issues, including disputes with non-EU traders.
- Make the quality criteria laid down by the ADR Directive binding for PODR systems offered by online marketplaces; NCAs would be responsible for assessing whether platforms' PODR services comply with these quality requirements; in case of non-compliance, NCAs would request immediate measures to ensure compliance; if no action is taken within a certain time-period, the NCAs could order the marketplace to discontinue their PODR system.
- Establish an EU-level ADR system exclusively for cross-border complaints. The EU-level ADR system would have the necessary resources and means to handle different national legislation effectively; this measure would be financed through a tender selecting an ADR body in the EU to resolve cross-border disputes.
- As in Option C, encourage bundling of cases when ADR entity receives similar cases, and ensure that consumers are informed that disputes can be handled together with others.
- Make ADR participation compulsory for traders.
- As in Option C, replace the ODR platform with new cost-effective signposting tools (e.g. a chat-bot) to guide consumers looking for ADR solutions to the appropriate ADR body for their dispute.

5.3. Options discarded at an early stage

In order to address the problems identified by this report, the following policy measure was also considered but discarded earlier in the process, on the grounds of its lack of effectiveness in attaining the aforementioned specific objectives and because it raised concerns from the standpoint of consistency with fundamental rights:

Revamping the ODR Platform: This policy option aims to upgrade the technology and the functionalities of the ODR platform and modify its workflow so that consumers can directly complain to an ADR entity without the need for the trader's prior consent to participate in an ADR process. However, it is uncertain whether technical upgrades alone will significantly improve dispute resolution on the platform, as previous upgrades have not brought any significant results. Changing the workflow, on the other hand, would align with how ADR processes are typically initiated but does not provide any incentives for traders to participate. Additionally, industry stakeholders have expressed concerns about the relevance of complaints submitted through the ODR platform, which increases business costs by shifting the responsibility of handling consumer claims from businesses complaints handling systems to managing an ADR process involving a third party entity. Currently, half of the disputes initiated

on the platform and reaching an ADR entity are deemed ineligible, and this creates an unnecessary burden for businesses and ADR entities.

6. WHAT ARE THE IMPACTS OF THE POLICY OPTIONS?

A detailed assessment of the economic, social, environmental impacts and the effects on fundamental rights, including all the analysis and the quantifications, divided by stakeholder, is presented in Annex 4. A detailed stakeholders' view is presented in Annex 2. To calculate impacts on a time horizon of 10 years, a 3% discount factor is applied in order to consider present values.

After the assessment of these impacts, for each policy option is presented a scoring for the three areas of effectiveness towards reaching each specific objective, efficiency to assess how this is reached and coherence with EU legislation. The scores are given with points from 0 to 5 and are used to compare the options in section 7. The score for effectiveness is measured qualitatively based on the assessed performance of each policy option against each of the objectives. It also takes into account the impacts which cannot be quantified. As policy options address each of the objectives, the quantitative score takes into consideration how appropriate is each option to reach each individual objective (average measure). The score for coherence is also awarded qualitatively. The score for efficiency is based on the quantified net benefit of each policy option for all stakeholders and gives an indication of the cost/benefit ratio for each option. A score of 5 is awarded to the most efficient option and the other scores are given in proportion (details in Annex 4).

Option A: Non-regulatory intervention

- **Economic impacts:** Providing **trainings to ADR entities** to improve their understanding of digital and cross-border disputes and setting up a system to exchange best practices would entail recurring costs for the public sector (Member States and the Commission) due to the rapidly changing nature of digital markets. Trainings alone would not be effective in keeping ADR in par with the rapid evolution of digital markets and would not immediately increase consumers' redress opportunities. Training all certified ADR entities would be expensive and not all their staff members would participate, nor would all new material be promptly implemented. For cross-border disputes, trust and language barriers would limit the positive effects of trainings and thus require stronger solutions. A system for exchanging best practices would also impose costs on all parties involved without addressing in the short-medium term the issues arising in digital markets. **A self-regulatory approach to PODR** would be a first step towards bringing these systems in line with the ADR framework, but the voluntary nature of the measure makes its effectiveness depend on the good will of the industry. Thus, this measure is expected to have a limited positive impact on the reduction of consumer detriment in the long run. **Awareness raising campaigns** are expensive in view of the large number of consumers that need to be reached (several millions euros for the Commission or NCAs). Previous campaigns have not significantly improved the low level of awareness among consumers and businesses, as outlined in the problem definition, new campaigns must therefore be of a much higher quality and relevance to improve the situation and therefore new investment in the area should concentrate

on quality and best practices. Consumers' awareness of ADR is however highly uneven across the EU, as confirmed by the European Consumer Organization (BEUC) in their 2022 report on ADR.⁸⁵ Creating a standardized, easy-to-understand information template that ADR entities could use to exchange information during cross border disputes could help reduce the consumer difficulties to participate in a cross border ADR process and thus address a part of the detriment linked to cross border issues not addressed, but the impact of this measure is also expected to be limited. Similarly, adoption of **AI tools for instant translation** of documents by ADR could prove helpful with cross-border cases. All in all, the reduction in consumer detriment would remain limited as those measures are not expected to improve participation in ADR significantly.

Social impacts: This measure is expected to have positive impacts. Training programs for ADR entities could create additional jobs. Self-regulation of PODR by online marketplaces, if picked up by the platforms, would improve the governance of those businesses.

- **Environmental impacts:** None.
- **Impacts on fundamental rights:** Since Policy Option A is non-regulatory, its impact on fundamental rights is expected to be limited. Nevertheless, the implementation of specific policy measures within this option, such as better awareness-raising campaigns and the use of standardized templates for information exchange between ADR entities in cross-border disputes, could potentially enhance consumer protection in accordance with **Article 38 CFREU**.
- **Effectiveness:** To make ADR more suitable for digital markets, the option would rely on training for entities and enhanced exchanges of best practices between ADR entities, which is expected to have limited positive impacts for consumers. Previous efforts to increase consumer and trader engagement in ADR through awareness-raising campaigns have shown limited success (as outlined in the problem definition). Promoting templates for information sharing among ADR entities, coupled with the adoption of AI tools for accurate translations of supporting documents could facilitate to a certain exchange cross-border ADR. **Score: 2/5**
- **Efficiency:** compared to the modest results mentioned above, the costs for this option are relatively high for all parties involved. **Score: 0/5⁸⁶**
- **Coherence:** Policy Option A would have an overall limited impact on the coherence with other EU legal instruments as it does not envisage any legislative measures. However, a number of non-legislative initiatives proposed under this policy option could increase coherence by promoting convergence in the interpretation and application of EU law by ADR entities in different Member States. For example, implementing a system to facilitate the exchange of best practices would help ensure more consistent private enforcement of consumer law across the EU. Similarly, using standard templates for exchanging information in cross-border cases is likely to reduce fragmentation in ADR outcomes. Policy Option A would also align with other non-legislative initiatives taken at the EU level. Providing increased capacity-building support aligns with the **Single Market Programme's** objective to strengthen the functioning of the internal market, while engaging in dialogue with platforms to ensure that they provide consumer-friendly

⁸⁵ BEUC, Alternative Dispute Resolution For Consumers: Time To Move Up A Gear, June 2022.

⁸⁶ See Annex 4 for the calculation. Based on net benefit for the quantifiable impacts: EUR 0.

PODR services would be consistent with similar initiatives that led online marketplaces to offering voluntary commitments, such as the **Consumer Safety Pledge**.⁸⁷ **Score: 1/5**

- **Stakeholders' view:** Stakeholders underscored on various occasions the need for greater awareness-raising efforts, capacity-building investments, and the adoption of digital tools. Such initiatives would improve the uptake of ADR and improve performance of ADR entities. However, stakeholders have also emphasized that improving the ADR framework would require an intervention that goes beyond the enactment of non-legislative initiatives.

Option B: Procedural and geographical scope amendments

- **Economic impacts:** in addition to the measures assessed under Option A, Option B would broaden the scope of the Directive to include disputes between consumers and **third-country traders**. According to the problem definition, these consumer complaints could make up approximately 5% of the total (ECC data). Out of the 180,000 disputes currently resolved (as outlined in the problem definition), this would add up to **9,000 more**, resulting in a cost of up to EUR 2.7 million for **ADR entities** to process them (up to **EUR 24 million in 10 years**).⁸⁸ However, these additional disputes would **pre-empt larger costs** that would be incurred by several parties if the cases went to court. If the **consumers** win 90% of these disputes⁸⁹ (with businesses accepting the outcome of the ADR procedure), this would **reduce detriment** of up to about EUR 1.5 million every year,⁹⁰ i.e. up to **EUR 13 million in 10 years**. It is unlikely, however, that many third-country traders would agree to participate in ADR disputes. The numbers above only apply if 5% of complaints translate proportionally to 5% of disputes; the actual figures are expected to be significantly lower. **Allowing national authorities to disclose the identity of retailers who do not engage in ADR** would entail the preparation and the maintenance of ad-hoc databases, with **costs associated for NCAs** (0.5 FTEs at EUR 33.500 per FTE⁹¹, i.e. EUR 450,000 per year considering all Member States, **EUR 4 million in 10 years** plus IT costs). Consumers would save time by consulting this database as they would know in advance whether the business they have issues with is likely to engage in ADR. **Trust-marks** to give visibility to consistent ADR engagement by businesses would be complementary with the use of the database. For these businesses, this measure could boost their market reputation and increase their sales thanks to more consumer trust. **Strengthening quality criteria** to ensure that natural persons in charge of ADR are qualified for cross-border disputes (legal and linguistic

⁸⁷ For further information on the Product Safety Pledge, please see here: https://commission.europa.eu/business-economy-euro/product-safety-and-requirements/product-safety/product-safety-pledge_en

⁸⁸ EUR 300 per dispute, see problem definition. Discount factor for actualised value: 3%.

⁸⁹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/698442/Final_report_-_Resolving_consumer_disputes.pdf; In the absence of figures for the EU, assumption is based on data from the UK.

⁹⁰ $9,000 \times 90\% \times \text{EUR } 185$ (average value of an ADR dispute, proxy data from EU ODR Platform). In an ADR, as the solution is amicable, the solution offered to consumers would very likely be smaller than the total, hence the EUR 185 per dispute are to be considered a maximum value.

⁹¹ <https://ec.europa.eu/eurostat/web/products-eurostat-news/w/ddn-20221219-3>. Annual average salaries in the EU.

expertise) would entail costs for ADR entities to hire or train qualified staff while reinforcing consumer and business trust into cross-border ADR.

- **Social impacts:** The database of businesses refusing to participate in ADR would come at the price of some reputational damages for the businesses concerned. The inclusion of third-country traders within the scope of the Directive would level the playing field for EU and non-EU businesses. Strengthening quality criteria for experts working for ADR entities would improve qualifications of ADR professionals.
- **Environmental impacts:** None.
- **Impacts on fundamental rights:** By extending the scope of the Directive to disputes between EU consumers and traders established outside the EU, Policy Option B would provide consumers with an additional avenue to obtain redress, thereby strengthening their right to an effective remedy pursuant to Article 47 of the CFREU. However, the naming and shaming of traders who refuse to engage in ADR could potentially encroach on their freedom to conduct business under **Article 16 of the CFREU** and raise serious issues regarding the presumption of innocence under **Article 47 of the CFREU**.
- **Effectiveness:** The option would contribute to the modernisation of ADR as the inclusion of third-country traders reflects the recent market developments, providing additional redress opportunities for consumers buying goods and services online from companies established outside the EU. The naming and shaming traders who do not engage in ADR while promoting those that do so through trust-marks would **increase consumers' and traders' engagement in ADR** as consumers would know upfront which businesses are willing to participate to a dispute. Furthermore, the strengthening of quality criteria for the natural persons in charge of ADR would **contribute to the enhancement of cross-border ADR**, but only if awareness is high. **Score: 3/5**
- **Efficiency:** More ADR disputes entail more costs for ADR entities. The awareness raising measure also imply some costs. Stricter quality criteria for natural persons in charge of ADR impose costs for ADR entities (as they would have to train/recruit specialised staff). **Score: 0/5⁹²**
- **Coherence:** Similar to Option A, Option B would also have limited impact on coherence since the proposed legislative measures aim only at providing legal clarity and additional policy tools to increase engagement in ADR among consumers and traders. These measures would in any event be consistent with other similar initiatives undertaken at the EU level. For example, the use of trust marks to promote traders' engagement in ADR could draw inspiration from the EU trust mark introduced by the **eIDAS Regulation**⁹³ to enhance the user's confidence in online transactions. **Score: 2/5**
- **Stakeholders' view:** Given the increase in transactions between EU consumers and non-EU traders, stakeholders strongly support extending the scope of the Directive to cover such transactions. According to the results of the public consultation, 76% of 111 respondents find this extension very relevant or relevant. However, in response to the Call for Evidence and during the cross-border ADR roundtable, it was highlighted that incentivizing non-EU traders to

⁹² See Annex 4 for the calculation. Based on net benefit for the quantifiable impacts: EUR (-15) million.

⁹³ REGULATION (EU) No 910/2014 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0910>

participate in ADR and enforcing ADR outcomes against them would be challenging. As regards the quality criteria laid down by the Directive, overall stakeholders consider them sufficient, although monitoring should be improved to ensure independence of the natural persons in charge of ADR. Finally, the use of trust marks by traders and platforms as well as the naming and shaming of traders who refuse to participate in out-of-court procedures are regarded as useful tools to increase engagement by certain respondents.

Option C: Material scope amendments and new obligations for traders

- **Economic impacts:** This option would make the number of potential ADR disputes increase by about 4.5% as a direct consequence of the extension of the material scope of the Directive to disputes consumer disputes going beyond strict contractual issues.⁹⁴ Currently, as seen in the problem definition, there are approximately 2,250,000 consumers experiencing issues and who potentially would like to resolve them with ADR. However, this high number of consumers interested in ADR translates into only 300,000 eligible ADR disputes per year in the EU. Of these 2,250,000 consumers, approximately 4.5% has a dispute that today would fall outside the scope of the ADR Directive and would thus be ineligible for ADR (100,000 disputes). Therefore, potential disputes with this measure increase to 400,000. For each eligible dispute, a notification is sent by the ADR entity who receives a complaint to the business concerned for initiating the dispute out-of-court. Out of these 400,000 notifications sent by ADR entities to businesses, 240,000 would become disputes,⁹⁵ while approximately 128,000 would go unanswered.⁹⁶ If a duty to reply is introduced in the Directive, it is estimated that the **cost for businesses** to send a single reply is around EUR 20 (including preparation, processing and sending), resulting in a total cost for businesses of EUR 2.6 million per year, or **EUR 23 million in 10 years**.⁹⁷ A share of the 128,000 potential disputes for which businesses would now have to reply⁹⁸ could turn into actual disputes, with negative answers from businesses resulting in enhanced certainty for consumers, who could decide to bring their claim (or not) elsewhere. Out of the 128,000 potential disputes, it is estimated that approximately 77,000 would turn into actual disputes⁹⁹ (mostly those linked to businesses previously unaware of ADR, for a total of nearly 200,000 new

⁹⁴ ECC data (see Annex 4) on 2022 EU complaints' categorization used as a proxy for general ADR disputes. Complaints on general information requests, lack of confirmation, other misleading actions or omissions, refusal to sell/supply product or discrimination, and unfair and aggressive commercial practices, are considered as the extension of the scope under this policy measure and together account for 4.47% of all complaints.

⁹⁵ The ratio 180,000/300,000 applying now to 400,000.

⁹⁶ 96,000 as seen in the problem definition, i.e. 32% of total, which out of 400,000 is 128,000. It is unknown how many unanswered notifications are from SMEs and how many from large businesses.

⁹⁷ 3% discount factor applies for actualising values.

⁹⁸ Note that, as seen in the Evaluation (Annex 6), in six Member States trader participation is already always required (DK, HU, IS, LT, LV, SK). In other seven Member States trader participation is mandatory in specific sectors (AT, CY, CZ, DE, EL, ES, NL) and in further four, trader participation is required under specific circumstances (BE, HR, PT, SE). For simplicity in the calculation, these estimates do not take into consideration this, which is acknowledged as a limitation.

⁹⁹ Applying the same logic that approximately 60% of businesses, if solicited by ECCs, normally find an agreement with the consumers. Hence 60% of businesses who are solicited to reply would reply positively.

disputes under this policy option¹⁰⁰). If **consumers** win 90% of the times (with businesses accepting the ADR outcome), it would **reduce detriment** by EUR 33 million annually,¹⁰¹ i.e. **EUR 290 million in 10 years**. However, handling these 200,000 new disputes might cost up to EUR 60 million annually¹⁰² (EUR 527 million in 10 years) for ADR entities, which could be funded in various ways¹⁰³. Enabling **the bundling of similar cases by ADR entities** would generate savings for them (as a result of more efficient handling), offsetting their costs by EUR 11 million annually (i.e. EUR 97 million in 10 years)¹⁰⁴. The **net extra costs for ADR entities**, taking into account economies of scale, could range from EUR 0 to EUR 49 million annually (EUR 25 million on average), or from EUR 0 to EUR 430 million in 10 years (**EUR 215 million on average**). ADR entities incurring costs can also pass them on to the traders, knowing that they would still save compared to going to court. The duty of reply would replace the current requirement to **disclose information on ADR**, for businesses who do not intend nor are obliged to resolve disputes through ADR (64%¹⁰⁵ of traders)¹⁰⁶. It is known from the Impact Assessment linked to the current ADR Directive¹⁰⁷ that the inflation adjusted cost of providing information to consumers is about EUR 310 per business.¹⁰⁸ This is mostly a one-off cost. Every year, for newly established businesses who do not adhere to any ADR entities,¹⁰⁹ the total savings would amount to EUR 99 million annually,¹¹⁰ i.e. EUR 870 million in 10 years; a share of the costs stemming from “adding information on ADR in contracts, invoices, receipts, websites, brochures/leaflets”¹¹¹ would then be saved also for current businesses, for a total of EUR 165 million per year, i.e. EUR 1.4 billion in 10 years (**EUR 2.3 billion in 10 years in total as savings for businesses**). **Replacing the ODR platform** with signposting tools would **save the**

¹⁰⁰ 300,000-180,000 in the baseline +77,000.

¹⁰¹ 200,000*90%*EUR 185.

¹⁰² EUR 300 per dispute, see problem definition.

¹⁰³ However, one must take into account that ADR entities would experience economies of scale after a certain point, and only marginal costs of adding extra disputes should be taken into account. Also, the costs that these additional disputes entail pre-empt larger costs to be incurred by several parties if the cases end up in court.

¹⁰⁴ This is a conservative estimate related to potential savings. It takes into account the number of potential disputes (380,000) and assumes that only 10% of them are bundled together. Considering that the average value of a dispute is EUR 300, the savings amount to EUR 11 millions ¹⁰⁵ Consumer Conditions Scoreboard - Consumers at home in the Single Market, 2019, [consumers-conditions-scoreboard-2019_pdf_en.pdf \(europa.eu\)](#).

¹⁰⁵ Consumer Conditions Scoreboard - Consumers at home in the Single Market, 2019, [consumers-conditions-scoreboard-2019_pdf_en.pdf \(europa.eu\)](#).

¹⁰⁶ In the behavioural study on ADR/ODR it was found that “information provided on ADR entity websites does not seem to be a major driver of usage”. This apply especially if the trader who has to disclose this information does not intend to engage.

¹⁰⁷ Impact Assessment accompanying the document Proposal for a Directive of the European Parliament and of the Council on Alternative Dispute Resolution for consumer disputes (Directive on consumer ADR) and Proposal for a Regulation of the European Parliament and of the Council on Online Dispute Resolution for consumer disputes (Regulation on consumer ODR) {COM(2011) 793 final} {SEC(2011) 1409 final}.

¹⁰⁸ EUR 254 x 1.2217 as cumulative inflation between 2012 and 2023 (in2013dollars.com/Europe).

¹⁰⁹ Eurostat: 500,000 new wholesalers and retailers every year in the EU x 64% = 320,000.

¹¹⁰ 320,000 (see footnote above) x EUR 310 (costs for traders to comply with obligation information).

¹¹¹ 35% of the total costs (2011 Impact Assessment), i.e. EUR 109. We assume 10% of them would need reprint every year, for a cost of EUR 11 per existing business who does not adhere to an ADR entity (23,000,000 x 64% = 15,000,000).

European Commission about EUR 500,000 per year¹¹², i.e. **EUR 4.4 million in 10 years**.¹¹³ A behavioural study conducted on ADR information requirements¹¹⁴ showed that the currently requirement for traders to clearly disclose on their websites the ODR link does not positively impact on consumer's intention to use ADR; Thus, removing it would not produce any negative consequences on consumer engagement in ADR. Businesses operating online would not need to maintain an e-mail address for ODR correspondence, saving EUR 100 per year.¹¹⁵ The total **benefit for businesses** would then be EUR 370 million saved per year, i.e. **EUR 3.3 billion in 10 years**. Also, newly established businesses in the EU in the next 10 years would not incur costs to provide ODR information on their website, but this estimate is already included in the calculations linked to the removal of ADR information, presented above. Regarding the **obligation for marketplaces that provide PODR to show abidance by high-quality dispute resolution standards through self-certification**, it is known from the problem definition that, among nine important marketplaces, the average perceived¹¹⁶ compliance rate with the quality criteria laid down by the Directive is 67%. The self-certification scheme will let this figure tend towards 100% in the whole market, an improvement of 33% which is not directly quantifiable but leads to a **concrete reduction in consumer detriment**, as it would help consumers by countering unfairness and promoting a **level playing field for online marketplaces**. This would require large businesses to be subject to similar quality criteria as digital businesses operating mostly on domestic markets and SMEs when using standard ADR. Among the 12 quality requirements of the ADR Directive for which the mini-sweep on PODRs was performed, the lowest scores on perceived compliance concerned in particular five questions.¹¹⁷ From these, it appears that the most significant share of additional costs for online marketplaces would stem from hiring impartial mediators trained on consumer law and making sure translation (even automatic translation) is provided to the consumer. There are 438 online marketplaces selling in the EU with 1000 Internet domains,¹¹⁸ and it is estimated that half of them may already have a Private Online Dispute Resolution (PODR) platform or may only need marginal improvements to meet the quality criteria set by the ADR Directive. This would mean that 110 businesses

¹¹² See Annex 7 for more information on the costs of the ODR Platform. This figure also takes into account the costs of replacing the ODR platform with signposting tools, which are estimated to amount 100 000 maximum.

¹¹³ EUR 600,000 every year saved if the ODR platform stops to be maintained, minus EUR 100,000 every year for other developed solutions to redirect consumers to the right ADR entity (e.g. artificial intelligence-powered lawbots/chatbots).

¹¹⁴ Behavioural study on disclosure of ADR information to consumers by traders and ADR entities.

¹¹⁵ The average cost of maintaining this e-mail address, considering the due diligence of conducting business which would require to read the correspondence on a daily basis, is assumed to amount to EUR 0.5 per working day. Prospective ADR dispute requests (400,000 per year) would only occasionally reach the mailbox of a business (about 3,700,000 retailers operates online, Eurostat).

¹¹⁶ It is important to highlight that the sweep only indicated if the information about the different criteria were found in the platform, it could be that some criteria are satisfied even if information is not given.

¹¹⁷ Are the persons in charge of dispute resolution impartial?, Can a consumer submit the complaint in a language of their choice (or at least the country where they reside)?, Is there any guarantee that the persons in charge of dispute resolution are trained in the consumer law?, Do consumers have access to the trader's position/evidence?, Can the consumer be represented?, for which compliance among the 9 businesses swept was lower than 22%.

¹¹⁸ CBC Commerce, <https://www.cbcommerce.eu/blog/2022/09/21/top-100-marketplaces-in-europe-annual-ranking-2022-out-now/>.

would need to significantly improve their processes to match the criteria, incurring costs such as hiring lawyers expert in consumer law to oversee the dispute resolution process (EUR 100,000 per year) and purchasing automatic translation tools (EUR 10,000 lump sum). The total estimated **cost over 10 years would be EUR 97 million** (or EUR 11 million per year). **Granting ECCs** a supporting role means that ECCs would have to assist ADRs with questions about applicable law in other EU countries, translating correspondence and documents relevant for the case, etc. This is estimated to require about 50 FTEs in the whole EU, re-absorbing the equivalent number of posts acting as ODR contact points in the Member States. This zero-cost measure¹¹⁹ would in turn further decrease consumer detriment and save costs to the ADR entities. The measure to establish a self-certification mechanism for EU-level trade associations whereby they could take on a role (on a voluntary basis) in setting up cross-border dispute settlement systems is estimated to have limited additional costs for the interested associations. The option also includes **extending the scope to third-country traders**, but the measure is not included in this assessment of the economic impacts of Option C due to its dependence on the willingness of traders to engage in ADR disputes, which is considered low.

- **Social impacts:** The certainty to rapidly obtain an answer to their complaints brought to a proper ADR would reduce drastically the stress of consumers who would better assess the feasibility of the various concrete possibilities to solve their issue. The extended scope of application of the Directive would also diminish stress for those disputes which currently can only have their solution in court. Replacing the ODR Platform would have no social impact on employment as MS contact point (about 50 FTEs throughout the EU) would be absorbed by ECCs with new cross-border ADR responsibilities.
- **Environmental impacts:** Expanding the scope of the Directive to include extra-contractual disputes would allow consumers to seek redress for damages resulting from unfair commercial practices, including those related to misleading green claims. The possibility of obtaining redress against greenwashing through ADR would reinforce the efforts of public consumer protection authorities and contribute to achieving the goals of the European Green Deal strategy.
- **Impacts on fundamental rights:** Policy Option C would have an overall positive impact on fundamental rights. The widened material and geographical scope of the Directive would ensure that consumers have access to private redress for a broader range of disputes, thereby reinforcing their right to an effective remedy as laid down by **Article 47 of the CFREU**. The measures aimed at ensuring through a self-certification mechanism that PODR systems adhere to high-quality standards would enhance consumer protection (**Article 38 CFREU**) without imposing burdensome obligations that would negatively impact on the platforms' freedom to conduct business (**Article 16 of the CFREU**). Although the introduction of a duty of reply would require traders to examine any potential disputes forwarded to them by ADR entities, the fact that businesses are not obliged by the Directive to participate in ADR ensures that their freedom to conduct business is observed.
- **Effectiveness:** The option makes ADR fit for digital markets by increasing the number of times ADR is used to solve disputes arising from marketing techniques typical of our era and providing

¹¹⁹ ODR contact points are funded by MS budget, while ECC are co-financed by the EU. In shifting these jobs, MS would have less expenses and the EU some more.

PODR services in line with the existing quality requirements of the Directive, harnessing all their benefits for consumers and SMEs. The option effectively increases consumers' and traders' engagement in ADR through a new obligation for businesses to reply to ADR entities regarding the dispute and replacing the ODR Platform with AI-signposting for consumers, leading consumer detriment to further decrease of EUR 290 million in 10 years, with less psychological distress. The option facilitates cross-border ADR through cost-free measures on empowered ECCs and trade associations. **Score: 4/5**

- **Efficiency:** The option reaches the objectives by bringing a total of EUR 5.6 billion in 10 years of savings for businesses thanks to the removal of disclosure obligations (even though a few large businesses are expected to incur costs of EUR 97 million in 10 year; this would foster a level playing field). This would be complemented by EUR 4.4 million in 10 years of reduction in costs for the Commission and EUR 233 million of additional costs for ADR entities (which would however pre-empt larger costs to be incurred by several parties if the cases end up in court and could pass the costs onto traders). **Score: 5/5¹²⁰**
- **Coherence:** Policy Option C would significantly enhance the coherence of EU consumer protection legislation. It clarifies the scope of the ADR Directive by making it explicit that it applies to any consumer disputes (regardless of whether they are related to contractual issues). This option would bring the ADR Directive in line with **Article 11(a) of the UCPD**, which provides that 'consumers harmed by unfair commercial practices shall have access to proportionate and effective remedies'. In this respect, consumer ADR could be argued to constitute an accessible and effective remedy against unfair commercial practices. In general, by broadening the category of admissible disputes and increasing awareness of ADR among consumers and traders, this policy option would dovetail with a number of EU legal instruments, including the **European Small Claims Procedure¹²¹**, the **Mediation Directive¹²²** and the **Representative Action Directive¹²³**, as they all share the common objective of promoting access to justice. On a different note, the requirement for online marketplaces to provide high quality ODR services to resolve consumer disputes between their users would be coherent with their obligations under **Article 20 and 21 of the DSA** to provide sound complaint handling systems and access to out-of-court dispute settlement systems for content moderation disputes. Although the revised ADR and the DSA would have different targets, the former pertaining to consumer disputes and the latter focused on content moderation disputes, as well as different systems to attain them, the ADR Directive through self-certification and the DSA through obligations laid down in the Regulation, both strive to facilitate fair, affordable and efficient resolution of disputes within the online ecosystem. **Score: 5/5**

¹²⁰ See Annex 4 for the calculation. Based on net benefit for the quantifiable impacts: EUR 5.5 billion.

¹²¹ Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure, [EUR-Lex - 32007R0861 - EN - EUR-Lex \(europa.eu\)](#).

¹²² Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters, [EUR-Lex - 32008L0052 - EN - EUR-Lex \(europa.eu\)](#).

¹²³ Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC (Text with EEA relevance), [EUR-Lex - 32020L1828 - EN - EUR-Lex \(europa.eu\)](#).

- **Stakeholders' view:** The vast majority of stakeholders across all categories emphasised the need to revise the ADR Directive by widening its scope to explicitly include disputes related to consumer statutory rights independently of the existence or not of a contract or what is in the contract, making the ADR framework more accessible and used and thus cost-effective, and stepping up cross-border ADR. There have been divergent views on whether to incentivize collective ADR through the bundling of cases due to limited resources and capacity of some ADR entities. In the context of the open public consultation, 58% of the 111 respondents expressed their support for collective ADR. The cross-border roundtable also concluded that collective ADR should be encouraged as a way to ensure the sustainability of ADR entities in times of crisis. However, stakeholders highlighted that the design of collective ADR should be left to the Member States. There is a general consensus that the EU ODR Platform is limited in its cost-effectiveness. While some stakeholders believe that upgrading the role of ODR contact points to become de facto ADR contact points would notably improve the potential to resolve cross-border disputes, the majority prefer to replace the platform with user-friendly AI tools for better consumer signposting. As regards the role of ECCs, the informal ministerial on consumer affairs organised by the Czech Council Presidency in September 2022 confirmed that most Member States are satisfied with the assistance provided by the ECC-Net to consumers in their cross-border disputes and envisage a stronger role to be played by ECCs in cross-border ADR. Lastly, the participants at the ADR Assembly of 2021 emphasized the importance of reducing reporting obligations for ADR entities to free up resources that could be used to expand their outreach.

Option D: Architectural changes and increased level of harmonization

- **Economic impacts:** If ADR were to be mandatory for traders above a certain threshold, up to all the 300,000 disputes currently launched yearly would be solved by ADR (up to 120,000 more).¹²⁴ This would mean, if consumers win 90% of the times (with businesses accepting the result of the ADR procedure), a **reduction in consumer detriment** of about EUR 20 million per year,¹²⁵ i.e. up to **EUR 176 million in 10 years**. Obliging businesses to engage in these disputes would make them incur costs of participation, i.e. time and legal fees, even if they do not intend to abide by the outcome of the process (which could lead potentially to further expenses in court). Assuming that for an average dispute, small amounts are a stake, **businesses** would spend EUR 100 to prepare and participate in ADR (if the cost of preparation would be higher than the value of the dispute and ADR were mandatory under this policy option, businesses would prefer to reimburse fully the consumer rather than start the proceeding), and **cumulative costs** would amount to EUR 12 million every year,¹²⁶ i.e. up to **EUR 105 million in 10 years**. 120,000 extra disputes would also mean additional costs of EUR 36 million per year by ADR **entities** to handle disputes, i.e. a **cost** of up to EUR 316 million in 10 years. As in the assessment of Option C,

¹²⁴ There is no information on the size of the businesses more involved with ADR disputes, but it is expected that a large number of the 300,000 eligible disputes is with large businesses.

¹²⁵ 120,000*90%*EUR 185.

¹²⁶ EUR 100 x 120,000 disputes.

ADR entities would experience economies of scale after a certain point, and only marginal costs of adding extra disputes should be taken into account. The **bundling measure** (collective ADR redress) would also have an offsetting effect which, if 10% of disputes are bundled together, amounting to EUR 9 million per year or **EUR 79 million in 10 years**.¹²⁷ The total costs for ADR entities (which they could pass on to traders) would then be between EUR 0 and EUR 27 million per year (EUR 14 million on average), i.e. between EUR 0 and EUR 237 million in 10 years (**EUR 119 million in 10 years on average**). **Extending the quality criteria of the ADR directive to platform's dispute resolution systems (under supervision and audits from ADR NCAs)**, would result in similar impacts to Option C with the difference being that there would be a process of certification process and audits instead of self-certification s. Hence, as in Option C, total costs in 10 years for online marketplaces to comply would amount to EUR 97 million, but in addition they would have to file the reports, for a total of 0.5 FTEs for each business (one-off) and 0.1 FTE every year to follow up on the file (at EUR 33,500 per FTE¹²⁸), i.e. EUR 5,000,000 in 10 years.¹²⁹ **The total cost for large business would therefore amount to EUR 102 million in 10 years.** In addition, the supervision and audits from ADR NCAs over 110 large businesses could translate into 10 audits per year, entailing a cost of 2 FTEs (EUR 31,700 per FTE the average in MS¹³⁰) and 2 more FTEs for supervising, for a total of EUR 1,100,000 in 10 years. Given that six Member States regularly perform on-the-spot checks on ADR entities as part of their monitoring mechanisms,¹³¹ with an estimated cost of EUR 10,000 for each Member State, in 10 years this would amount to additional EUR 500,000 for NCAs. **Total costs for NCAs would then amount to EUR 1.6 million in 10 years.** As in option C, the benefits would be a **concrete reduction in consumer detriment** mostly connected to the enhanced quality of PODR, as well as **level playing field for businesses**. Requiring MS to designate a **residual entity in charge of digital disputes**, as well as establishment of a residual EU-level ADR entity for cross border complaints (including with non-EU traders) would provide consumers with a convenient one-stop-shop solution for resolving their disputes out-of-court. This would be especially beneficial in a mandatory ADR framework, where confusion about where to seek redress could be particularly problematic. The residual entity designated by the MS would have to be staffed with legal experts in digital disputes, with an estimated cost of at least 2 FTEs per MS, totalling EUR 1,800,000 per year,¹³² i.e. **EUR 16 million of costs in 10 years for the 27 MS**. The EU-level entity for cross-border disputes, which would be an already existing, fully operational one selected by the Commission (through a tender/grant) would have the resources to be able to handle disputes in 23 official languages of the EU. Even if automatic translation is implemented, the supervision of at least 1 FTE per language is envisaged. That would mean

¹²⁷ 30,000*EUR 300 in 10 years with a 3% discount factor. ¹²⁸ <https://ec.europa.eu/eurostat/web/products-eurostat-news/w/ddn-20221219-3>. Annual average salaries in the EU.

¹²⁸ <https://ec.europa.eu/eurostat/web/products-eurostat-news/w/ddn-20221219-3>. Annual average salaries in the EU.

¹²⁹ EUR 33,500*0,5 FTEs*110 businesses = EUR 1,842,500, and EUR 33,500*0,1 FTEs*110 businesses for 10 years (3% discount rate) = EUR 3,237,000. Total = EUR 5 million.

¹³⁰ Eurostat, Average remuneration of national civil servants in central public administration.

¹³¹ Information gathering for assisting the Commission in complying with its obligation under Article 26 ("reporting") of the ADR Directive and Article 21 ("reporting") of the ODR Regulation.

¹³² EUR 33,500 x 2 FTEs x 27 MS.

about EUR 770,500 per year¹³³, which in 10 years means **EUR 7 million of costs for the Commission**. Requiring MS to have only one certified ADR body per retail sector (to reduce complexity of ADR landscape),_complemented by the residual cross-border and digital ADR, would help consumers in need to solve disputes in a framework where ADR is mandatory. This measure would increase competition among ADR entities in the same sector, in order to acquire the only available certification.¹³⁴ In turn, this would make ADR faster and of better quality, as well as boost the reduction of consumer detriment. If disputes were three months faster, the EUR 56 million at stake at any moment¹³⁵ would generate about EUR 280,000 of interest per year¹³⁶, i.e. **EUR 2,500,000 in 10 years at sure disposal of consumers or businesses winning the dispute**. However, some certified ADR entities that through this measure would lose the certification would certainly lose part of their revenue. As under Option C, but in a framework of mandatory ADR, replacing the ODR platform with signposting tools would **save the European Commission about EUR 4.4 million in 10 years and to businesses EUR 3.3 billion in 10 years**.¹³⁷ The option also includes **extending the scope to third-country traders**, but the measure is not included in this assessment of the economic impacts of Option C due to its dependence on the willingness of traders to engage in ADR disputes, which is considered low.

- **Social impacts:** Stress for consumers might increase because mandating ADR usage across the most problematic economic sectors would entail an extra redress layer producing outcomes not binding for the parties. If businesses that do not intend to engage in such a process are obliged to participate, they are more likely to reject the verdict of the ADR, obliging consumers to bring them to court or withdraw the case. This would undermine trust and societal cohesion. Replacing the ODR platform would have a negative social impact on those jobs as MS contact points connected to its implementation (about 50 FTEs throughout the EU). The new empowered residual entities created might absorb some of these jobs.
- **Environmental impacts:** None.
- **Impacts on fundamental rights:** The architectural changes proposed by this policy option would only affect national authorities and the Commission, without impacting fundamental rights. On the other hand, making participation in ADR mandatory would provide consumers with a quick and affordable way to resolve their disputes, regardless of its nature, reinforcing their right to an effective remedy under Article 47 of the CFREU and promoting a high level of consumer protection in accordance with Article 38 of the CFREU. However, this very same measure could potentially have negative impact on businesses right to access courts.
- **Effectiveness:** The option makes ADR fit for digital markets by empowering new residual entities in every MS to deal with digital disputes, and by extending quality criteria of the

¹³³ EUR 33,500 x 23 extra languages on top of the language of the MS.

¹³⁴ But damage those entities who would lose certification after having invested resources to abide by high quality standards

¹³⁵ 300,000*EUR 185.

¹³⁶ At 2% interest rate, in a quarter of a year EUR 56 million generate EUR 280,000.

¹³⁷ See assessment of Option C. To this it should be added about EUR 20 of savings for new businesses operating online (80,000, Eurostat) that do not need to place the ODR link on their website anymore (in the assessment of Option C this was included in the ADR disclosure of information related savings), i.e. EUR 1,600,000 per year or EUR 14 million in 10 years.

Directive to PODR systems, under the supervision of NCAs. The option **increases consumers' and traders' engagement in ADR** through a strong obligation to participate in ADR. If consumer detriment decreases of EUR 176 million in 10 years, businesses would incur larger costs, i.e. EUR 207 million in 10 years. Psychological distress could also increase due to mandatory ADR. The measure to facilitate cross-border ADR by empowering one EU-level ADR entity for the whole EU could enhance cross-border ADR, but the capacity of such entity to deal with a great number of disputes is uncertain. **Score: 3/5**

- **Efficiency:** The reduction of the costs connected to the replacement of the EU ODR platform would be efficient, with EUR 3.3 billion in 10 years of business savings (as no need to disclose hyperlink to ODR platform and maintain mailbox). However, the option would generate EUR 119 million in 10 years of costs for the ADR entities, considering economies of scale and offsetting measures such as the bundling of cases, which they could pass to the industry. However, there would be significant costs for MS, the Commission (partly offset by the replacement of the EU ODR platform) and NCAs to establish new ADR entities (at national and EU-level) and re-design national ADR landscapes. **Score: 2.8/5¹³⁸**
- **Coherence:** This option would produce different effects on legal coherence: on the one hand, by obliging Member State to restructure their domestic ADR landscape and harmonizing the rules governing ADR procedures and mandatory participation of traders in ADR, it would make consumer law more consistently enforced across the EU, thus strengthening the coherence of the consumer acquis. On the other hand, however, the measures proposed by this option would encroach on Member State's freedom to organize consumers' access to justice, which could undermine the internal coherence of their legal system. In this respect, there is uncertainty as to whether increasing the level of harmonization of the directive to such extent would be **proportionate** to the objectives pursued by the policy option. **Score: 3/5**
- **Stakeholders' view:** Although most stakeholders continue to support the minimum harmonisation approach of the Directive, which allows Member States to design their national ADR architecture according to their needs, resources and culture, certain consumer organisations advocate for mandatory ADR for traders, at least in sectors with a high-volume of disputes. The Commission's position thus far has been that ADR should remain voluntary, except when required by sector-specific or national legislation in the EU, especially because mandatory ADR could potentially conflict with constitutional norms in some Member States. Regarding the current consumer ADR landscape, consumer associations, industry representatives, online retailers, and European Consumer Centres (ECCs) all seem to agree that it requires simplification to enable consumers to navigate it.

7. HOW DO THE OPTIONS COMPARE?

To compare the options described and assessed above, a multi-criteria analysis has been conducted based on effectiveness, efficiency and coherence criteria. Different total scores have been calculated to account for sensitivity analysis, including:

¹³⁸ See Annex 4 for the calculation. Based on net benefit for the quantifiable impacts: EUR 3 billion.

- A simple sum of the individual criteria scores
- A scenario where effectiveness accounts for 80%, efficiency 10%, and coherence 10% (emphasis on effectiveness)
- A scenario where effectiveness accounts for 10%, efficiency 80%, and coherence 10% (emphasis on efficiency)
- A scenario where effectiveness accounts for 10%, efficiency 10%, and coherence 80% (emphasis on coherence)
- A scenario where effectiveness accounts for 40%, efficiency 40%, and coherence 20% (emphasis on both effectiveness and efficiency).

The highest scores for each system are in bold.

| Comparison of options | | | | | Sensitivity analysis | | | |
|-----------------------|---------------|------------|-----------|---------------|------------------------|---------------------|--------------------|---------------------------------------|
| Options | Effectiveness | Efficiency | Coherence | Equal weights | Effectiveness dominant | Efficiency dominant | Coherence dominant | Effectiveness and efficiency dominant |
| A | 2 | 0,0 | 1 | 1,0 | 1,4 | 0,6 | 1,0 | 1,0 |
| B | 3 | 0,0 | 2 | 1,7 | 2,2 | 1,0 | 1,8 | 1,6 |
| C | 4 | 5,0 | 5 | 4,7 | 4,4 | 4,8 | 4,8 | 4,6 |
| D | 3 | 2,8 | 3 | 2,9 | 3,0 | 2,9 | 3,0 | 2,9 |

8. PREFERRED OPTION

Policy option C, scope amendments and new business obligations, has been identified as the preferred policy option as it received the highest score in each of the five scoring systems used to compare the alternatives. It maintains the current minimum harmonization approach of the Directive and does not require Member States to make participation in ADR mandatory for traders. Hence, the preferred option is consistent with the principle of subsidiarity governing EU action. It achieves Specific Objective 1 by extending the scope of Directive to disputes going beyond issues with the contract and disputes between EU consumers and non-EU traders. However, while broadening the scope of the Directive to reflect novel forms of disputes arising in digital markets, the voluntary nature of ADR ensures that the amendments will not result in unproportioned costs for ADR entities, NCAs and businesses. The principle of proportionality is observed also with regards to the measures concerning PODR; by providing for a self-certification mechanisms for online marketplaces to show that their PODR abide by high-quality standards, the relevant measure in the preferred option does not impose excessive burden on these traders. As regards Specific Objective 2, the introduction of a trader's duty of reply to enquiries by ADR entities is expected to increase business engagement in ADR. This measure entails some costs for businesses, but these costs are more than offset by the removal of disclosure obligations for traders who do not intend nor are obliged to participate in ADR. Furthermore, the preferred option proposes to discontinue the ODR platform (and with it, the removal of the traders' obligation to provide a hyperlink to the platform on their website), and replace it with new, more cost-efficient, signposting tools to be deployed by the Commission to increase consumer awareness and engagement. SMEs, the wide majority of businesses, are set to benefit from these measures, which will result in significant cost savings. As a

result, competitiveness of EU SMEs will be impacted positively by this option, as these savings could be used to boost the attractiveness of their prices, and possibly foster innovation.

Finally, the enhancement of cross-border ADR (Specific Objective 3) will be achieved only by granting a new specific role to the existing ECCs (no need for additional resources, as they will absorb ODR contact points) and by enabling trade association to set up on a voluntary basis cross-border dispute settlement systems. Thus, these measures do not go beyond what is strictly necessary to achieve their specific objective.

8.1. REFIT (simplification and improved efficiency)

The preferred option will provide the following opportunities for improved efficiency, calculated on an annual basis:

- EUR 370M ongoing adjustment cost savings for businesses (replacing of EU ODR Platform);
- EUR 264M ongoing adjustment cost savings for businesses (removal of ADR disclosure of information obligations).

8.2. Application of the ‘one in, one out’ approach

The preferred option comes with the following small annual adjustment costs:

- EUR 2.6M ongoing adjustment costs for businesses (from duty of reply);
- EUR 25M ongoing adjustment costs for ADR entities (handling additional disputes);
- EUR 11M related to compliance for private ODR platform providers.

This total of EUR 39 million per year is highly compensated by the EUR 634 million of annual cost savings coming from simplification.

9. HOW WILL ACTUAL IMPACTS BE MONITORED AND EVALUATED?

To assess the effectiveness in achieving the objectives of the option introduced, the following core progress indicators have been identified in line with the objectives of the policy action. These indicators can serve as the basis for its evaluation, as well as possible targets to be achieved seven years after the entry into application of the revised Directive.

| Objectives | Core indicators | Baseline | Target in 7 years |
|---|---|----------------------------------|--|
| Increase the number of disputes resolved through ADR in the EU | Number of ADR disputes in the EU. | 180,000 ADR disputes every year. | 400,000 ADR disputes every year. |
| Increase the number of extra-contractual disputes resolved through ADR in | Number of extra-contractual disputes solved with ADR in the | N/A | 100,000 extra-contractual disputes solved with ADR in the EU every |

| the EU | EU. | | year. |
|---|--|--|---|
| Increase awareness of ADR among consumers and traders | Awareness of ADR among consumers and traders. | 28% of consumers aware. 43% of retailers aware. | 50% of consumers aware. 70% of retailers aware. |
| Obtaining a large number of self-certified private ODR platforms | Sweep on the number of self-certified private ODR platforms in the EU. | N/A | 100 self-certified private ODR platforms in the EU. |

ANNEX 1: PROCEDURAL INFORMATION

1. LEAD DG, DeCIDE PLANNING/CWP REFERENCES

| | |
|------------------------|---|
| Lead DG | DG JUST |
| Decide Planning | PLAN/2022/1534 |
| CWP reference | CWP 2023, Annex II: REFIT initiatives, No.8 |

2. ORGANISATION AND TIMING

An Inter-Service Steering Group (ISSG) assisted DG JUST in the preparation of the Impact Assessment and legal proposal. It included Commission Services of 8 Directorate-Generals: DG for Financial Stability, Financial Services and Capital Markets Union (FISMA), DG Internal Market, Industry, Entrepreneurship and SME (GROW), DG Communications Networks, Content and Technology (CNECT), DG Mobility and Transport (MOVE), DG for Health and Food Safety (SANTE), DG Environment (ENV), DG Competition (COMP), DG Energy (ENER), together with the Commission's Legal Service (SJ) and Secretariat General (SG).

The ISSG held three meetings before the consultation of the Regulatory Scrutiny Board (RSB): on 26 August 2022, on 24 January 2023 and the last meeting on 20 March 2023. Pursuant to the requirements of the better regulation guidelines, the minutes of the last meeting were submitted to the RSB.

A fourth meeting took place on 7 July 2023 to discuss the changes following the positive opinion of the RSB.

3. CONSULTATION OF THE RSB

The RSB was consulted in an upstream meeting on 21 October 2022. The draft Impact Assessment report and all supporting documents were submitted to the RSB on 29 March 2023, in view of a hearing on 26 April 2023.

After the hearing, the RSB issued a positive opinion. Amendments to the impact assessment, following the recommendation of the opinion, include:

- A better explanation and renaming of the policy options, in particular on how measures were included in each bundle;

- An acknowledgement of the limitations of the analysis, in particular considering that in some Member States and industrial sectors ADR is mandatory. Quantifications remain impossible;
- Methodology for the scoring system was better explained.

4. EVIDENCE, SOURCES AND QUALITY

The impact assessment is based on several sources, using both quantitative and qualitative data. However, the impact assessment was not supported by a dedicated study. These sources include:

Studies commissioned or supported by the European Commission

- European Commission, Directorate-General for Justice and Consumers, Tetra Tech, VVA, CSES, *Information gathering for assisting the Commission in complying with its obligations under Article 26 (“reporting”) of the ADR Directive and Article 21 (“reporting”) of the ODR Regulation*, (2022).
- European Commission, Directorate-General for Justice and Consumers, Tetra Tech, VVA, CSES, *Information gathering for assisting the Commission in complying with its obligations under Article 26 (“reporting”) of the ADR Directive and Article 21 (“reporting”) of the ODR Regulation, Annex I, Case Study: the use of AI in ODR and Case Study – the use of ADR in E-commerce*, (2022).
- European Commission, Directorate-General for Justice and Consumers, LE Europe, VVA, YouGov, LinQ, *Behavioural study on disclosure of ADR information to consumers by traders and ADR entities*, (2022).
- Prof. dr. Stefaan Voet, Sofia Caruso, Anna D’Agostino, Stien Dethier, *Recommendations from academic research regarding future needs of the EU framework of the consumer Alternative Dispute Resolution (ADR)*, (JUST/2020/CONS/FW/CO03/0196), 2022, available at https://commission.europa.eu/system/files/2022-08/adr_report_final.pdf.
- Consumer Conditions Survey: Consumer at home in the single market – 2021 edition, available at https://commission.europa.eu/system/files/2021-03/ccs_ppt_120321_final.pdf
- Consumer Conditions Scoreboard - Consumers at home in the Single Market – 2019 edition, available at consumers-conditions-scoreboard-2019_pdf_en.pdf (europa.eu).
- The 2022 EU Justice Scoreboard, available at [THE 2022 EU JUSTICE SCOREBOARD](https://the-2022-eu-justice-scoreboard) (europa.eu).
- Market Monitoring Survey 2019-2020, available at mms-overview-report-19-20_en.pdf (europa.eu)

Publicly available dataset/information

- Data on sweeps (up to 2022).
- ODR platform statistics (2016-2022).
- ECCs data (up to 2022).
- Eurostat.

ANNEX 2: SYNOPSIS REPORT: STAKEHOLDER CONSULTATION

INTRODUCTION AND CONSULTATION STRATEGY

This report presents a comprehensive summary of all stakeholder consultation activities conducted in preparation for the Commission proposal concerning the revision of the Alternative Dispute Resolution (ADR) Directive¹³⁹ and the repeal of the Online Dispute Resolution (ODR) Regulation¹⁴⁰. The report encompasses an overview of all the backward and forward-looking consultation activities carried out to gather data for the Evaluation and the back-to-back Impact Assessment accompanying the revision of the ADR Directive.

The consultations' primary objective was to offer all relevant stakeholders, who are concerned by the ADR Directive and therefore potentially affected by its revision, the opportunity to express their views on various issues addressed by the Evaluation and the Impact Assessment. **Thus, this annex provides an overview of the consultations conducted for the purposes of both documents.**

The stakeholders which the Commission identified as relevant are:

- ADR National Competent Authorities (NCAs);
- ADR entities;
- Traders and trade associations;
- Citizens, consumer organizations and European Consumer Centers.

In addition, the Commission on several occasions consulted experts from the industry and academia, reflecting their views in the Evaluation and Impact Assessment.

CONSULTATION ACTIVITIES AND TOOLS

Consultation activities have been taking place well before the current revision process was launched, reflecting the Commission's commitment to maintaining regular communication with stakeholders in the context of ADR/ODR. In 2019, the Commission published its first joint ADR/ODR application report,¹⁴¹ in accordance with Article 26 of the ADR Directive and Article 21(2) of the ODR Regulation. This report drew on the first round of national ADR reports submitted by the ADR NCAs that year. Furthermore, the Commission organized the first ADR Assembly in Brussels in 2018, gathering over 350 representatives from the European ADR community. This diverse group included consumer and business representatives, regulators, academics, and 187 representatives from ADR bodies.

¹³⁹ 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).

¹⁴⁰ Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Regulation on consumer ODR).

¹⁴¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2019:425:FIN>

In view of the revision of the ADR Directive, the Commission enhanced its exchanges with the ADR NCAs by setting up a WIKI platform to facilitate communication. The platform has proven useful for the Commission in sharing information and serving as a repository for best practices. Starting from 2021, the Commission has organised consultation activities to collect insights on: a) the implementation of the ADR directive across the EU, b) existing challenges and shortcomings, and c) potential avenues for improvement.

In this context, all relevant stakeholders have been reached by the following consultation activities:

- **2021 ADR Assembly;**
- **ADR workshops;**
- **Targeted consultations** in multilateral meetings with various stakeholders
- **Online surveys and in-depth interviews** with main stakeholders conducted in the framework of several external studies
- **Backward-looking Open Public Consultation (OPC)** for the Evaluation of the ADR Directive, which run from 4 April to 27 June 2022
- **Forward-looking OPC** for the Impact Assessment related to the revision of the ADR Directive, which run from 28 September 2022 to 21 December 2022
- **Call for Evidence (CfE)** for the Impact Assessment, which was launched together with the OPC on 28 September 2022

The public consultations were promoted using the communication channels put in place by the Commission for exchanges with ADR NCAs and via social media to reach the general public. Their results were published on the “Have Your Say” portal.¹⁴²

OVERVIEW OF CONSULTATIONS

This section provides an overview of the input received from all relevant stakeholders in the context of the different consultation activities carried out by the Commission.

a) ADR Assembly 2021

In 2021, the Commission organised a high-level ADR assembly, which was held online a year later than initially planned due to the COVID-19 outbreak.¹⁴³ Participants included certified ADR entities from the EEA area, ADR NCAs, ECCs and academics. The closing session took place in a public format with the presence of the Commissioner for Justice and Consumers. During the two-day event (28-29 September 2021), attendees participated in three workshops focusing on:

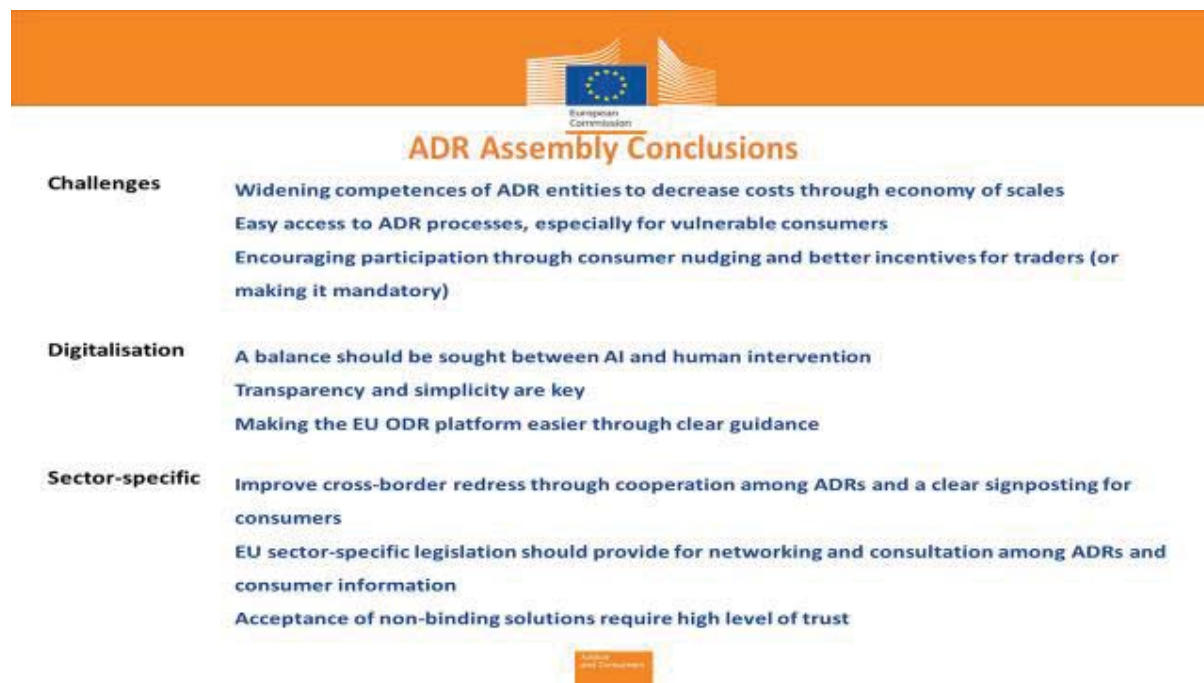
- Costs, benefits and challenges of various ADR models;

¹⁴² The factual summaries of the various public consultation activities can be found here: https://ec.europa.eu/info/law/better-regulation/have-your-say_en

¹⁴³ Material of the ADR Assembly and outcome report are found [here](#).

- Suitability of the ADR Directive for the digital markets; and
- Sector-specific issues (transport, energy, telecommunications, financial services).

The slide below sums up the Assembly's conclusions:



b) ADR Workshops

Following the ADR Assembly, the Commission organised two ADR workshops:

1. Consumer Summit 2022: Panel discussion on use of Digital tools in ADR processes

The Consumer Summit 2022 took place in Strasbourg under the French Council Presidency.¹⁴⁴ ADR entities, ADR NCAs and ECCs convened once again to discuss the challenges in relation to online redress tools and the benefits of investing in digital tools to improve ADR. Participants emphasised the importance of digital tools in improving accessibility, speed and compliance with ADR outcomes. **They concluded that while the existing ADR/ODR framework provides a robust foundation, it requires updates, such as incorporating quality requirements for automated tools** (e.g., chatbots, algorithmic complaint analysis, legal tech).

2. Cross-border ADR Roundtable

¹⁴⁴ Discussion paper and the recording to the panel discussion (Workshop 1, Panel Discussion 2) are available [here](#).

The Commission, together with ECCs, hosted a roundtable on cross-border ADR on 21 June 2022.¹⁴⁵ 60 participants took part in the event, including ADR entities, ADR NCAs, ECCs, academics, consumer organizations, traders and trade associations. During the discussion:

- the ECCs presented a position paper¹⁴⁶ based on a survey conducted earlier in 2022, offering recommendations **on how to enhance trader participation in cross-border ADR, closing ADR coverage gaps and reinforcing the role played by ECCs in cross-border ADR**;
- The European Consumer Organisation (BEUC) presented its position paper¹⁴⁷, calling for the following measures: a) ensuring that NCAs conduct the necessary checks to verify **that traders accurately inform consumers about the availability of the EU ODR platform**; b) making **ADR mandatory for traders** and providing **incentives for compliance with the outcomes**; c) **improving the information available on the EU ODR platform**, including details about consumer rights in sectors generating the highest number of consumers complaints and information concerning all available redress pathways for consumers.
- Prof. Stefaan Voet from the University of Leuven presented a legal study commissioned by JUST regarding the future needs of the EU ADR framework¹⁴⁸
- The external contractor carrying out the ADR data information gathering study shared preliminary conclusions of the study (yet to be published).

To improve cross-border ADR, participants recommended the following measures:

- **mandatory trader participation or strong incentives for traders** to participate in ADR;
- increasing the **use of e-translation tools or adopting English as a universal language**;
- establishing **sector-specific pan-European ADR networks**;
- providing **more guidance on accreditation**, monitoring, and supervision of ADR entities;
- **improving data collection**, structuring and dissemination of best practices;
- improving online interfaces of platforms;
- **offering clear information to consumers about the different pathways** to resolve their disputes (*e.g.*, through awareness campaigns).

Participants emphasised the need for the ADR framework to better address today's redress challenges, notably in digital markets. Digitalisation could foster a more efficient complaint-handling framework in cross-border scenarios and enhance cost-effectiveness. Current EU

¹⁴⁵ Discussion papers and outcome report are available [here](#).

¹⁴⁶ Available here: <https://www.eccnet.eu/sites/default/files/2022-09/ECC%20Network%20-%20position%20paper%20-%20Alternative%20Dispute%20Resolution%20in%20Europe.pdf>

¹⁴⁷ ADR for consumers: Time to move a gear up. Available here: https://www.beuc.eu/sites/default/files/publications/beuc-x-2022-062_adr_position_paper.pdf

¹⁴⁸ The study and an executive summary are available [here](#).

investment in digitalisation and available funding could be better leveraged to boost small companies' IT capacities and access to ADR. **Given the low usage of the European ODR platform managed by the Commission, participants urged the Commission to consider revising its functionalities from a seldom-used match-making tool to a platform providing insights for consumers and traders on their redress needs and opportunities.**

Most participants expressed a **desire for the ADR Directive to promote collective ADR** for the sustainability of ADR entities; however, they recommended leaving the implementation of such mechanisms to the Member States.

c) Meetings organised by JUST, Unit E3

The views of the main stakeholders were also collected through a number of targeted consultations in various meetings.

1. Meetings with ADR NCAs

| Date | Objectives |
|----------------|---|
| 13 July 2021 | <ul style="list-style-type: none"> - Take stock of the impact of COVID-19 on ADR; - Share best practices (DE: research project on information requirements by the traders on ADR; BE: architecture of ADR in BE and the accreditation procedure used); |
| 8 March 2022 | <ul style="list-style-type: none"> - Reflect on the current shortcomings of the EU ADR framework; - Discuss the next steps following the Panel Discussion at the Consumer Summit 2022; - Inform competent authorities that the Commission launched 3 ADR-related studies; - Discuss ECC project on cross-border ADR; - Discuss the template for the ADR national report to be submitted by NCAs; |
| 29 August 2022 | <ul style="list-style-type: none"> - Inform about external study to support evaluation of ADR framework; - Announce the intention to revise the ADR Directive and repeal the ODR Regulation and that the OPC and CfE will be published by end of 2022; - Present the main areas of concern and open discussion with NCAs; |

2. Meeting with ECCs on the impact of the repeal of the ODR Regulation

| Date | Objective |
|-----------------|---|
| 12 October 2022 | <ul style="list-style-type: none"> - Discuss the role of ECCs in view of the revision of the ADR Directive and the repeal of the ODR Regulation, especially as that many ECCs serve as ODR contact points. |

3. Meetings with sector-specific ADR entities

| Date | Meeting | Objectives |
|------------------|---|---|
| 10 June 2020 | Co-organised by JUST and MOVE in view of the voucher recommendations. Participants: qualified ADR entities dealing with travel disputes. | <ul style="list-style-type: none"> - Present the objectives of the Commission Recommendation on vouchers; - Enable ADRs to share their experiences and challenges they are facing in resolving disputes in the travel industry; especially voucher-related issues in view of COVID-19 pandemic. |
| 19 November 2022 | Co-organised by JUST and ENER in view of the increase of energy prices Participants: qualified ADR entities dealing with energy disputes | <ul style="list-style-type: none"> - Inform about the upcoming revision of the ADR Directive; - Announce policy updates addressing the energy crisis; and - Enable energy ADRs to share how they are handling the increase of consumer complaints. |

Furthermore, the Commission participated in numerous meetings organised by stakeholders to present and exchange on the substantive issues that it intends to tackle through the revision of the ADR/ODR framework. The table below provides an overview of these meetings.

| Event | Date |
|--|-------------------|
| Spanish ADR Symposium | 21 September 2020 |
| ADR Conference organised by Autocontrol, Spain | 14 September 2021 |
| ADR Conference organised by the Malta Competition and Consumer Affairs Authority | 30 September 2021 |
| Midi du Consommateur Européen organised in Luxembourg | 6 October 2021 |
| ADR Training organised by Banca d'Italia | 21 October 2021 |
| International Conference on Consumer Arbitration in Barcelona | 27 October 2021 |
| ICPEN webinar on ADR | 4 April 2022 |
| BEUC Experts meeting on ADR | 31 May 2022 |
| 5 th Anniversary of Travel-net, Berlin | 14 October 2022 |
| EU ADR Conference, Oxford University | 10 November 2022 |
| FIN-Net meeting, Brussels | 24 November 2022 |
| Banca d'Italia conference on ADR | 19 December 2022 |

| | |
|--|------------------|
| ADR conference organised by the Office of the Financial Arbiter, Malta | 23 February 2023 |
| ADR exchange for German conciliation bodies | 28 March 2023 |

d) External studies on ADR/ODR framework

Stakeholders' views were gathered in the context of three studies conducted by external contractors to gather information to feed the Evaluation and Impact Assessment related to the revision of the ADR/ODR framework. The studies are the following:

1. **Information gathering study on ADR and ODR in the EU:** This study assessed the effectiveness of the ADR Directive, focusing in particular on ADR awareness, diversity in the ADR landscape across the EU (governance, coverage, timing to resolve a dispute, compulsory vs. voluntary traders participation, traders compliance with ADR outcomes), the efficiency and cost-effectiveness of ADR/ODR, the effects of external factors (e.g., COVID-19), the advantages and disadvantages of using digital tools in ADR, and the ODR platform's functionality (e.g., user-friendliness). The external contractor conducted numerous stakeholder interviews (with ADR competent authorities, ADR entities, ECCs, consumer and trader organizations, ODR contact points, etc.). To better understand the specific context, dynamics, and cross-cutting issues of the ADR/ODR framework, five case studies were selected, including three sectoral case studies covering travel, e-commerce, and financial services, and two horizontal case studies on Artificial Intelligence use in ODR and accreditation.¹⁴⁹
2. **The ADR behavioural study:**¹⁵⁰ the study on disclosure of information to consumers by traders and ADR entities. It aimed to: a) identify optimal ways to present pre-contractual information on ADR on the traders' and ADR entities' websites by testing different disclosure options; and b) assess the use of a chatbot to assist consumers with their disputes by signposting them to a relevant ADR entity.
3. **Legal study:**¹⁵¹ the study, which was conducted under the supervision of Prof. Stefaan Voet from the University of Leuven, critically analysed the current EU ADR/ODR framework from a legal point, assessing where it could be improved by drawing lessons from five jurisdictions: BE, DE, FR, IT and NL.

i. Two Public Consultations and Call for Evidence

¹⁴⁹ See Annex I to the ADR Data collection study.

¹⁵⁰ link

¹⁵¹ See footnote 10 above

Between 4 April and 27 June 2022, the Commission ran a backward-looking public consultation¹⁵² through the "Have your Say" website to collect views on the functioning of the ADR/ODR framework from the general public as well as from relevant stakeholders, including consumer organisations, trade associations, and ADR entities. The outcome fed into the Evaluation of the ADR Directive. Besides standard profiling questions, the OPC comprised several questions aimed at gathering information on respondent's awareness and opinion on the usefulness of ADR. The results indicated that:

- Traders are more likely to use legal assistance in ADR;
- 74% of all respondents stated that they have no intention to use the ODR Platform in the future or were unaware of its existence;
- The best medium to enhance ADR knowledge is through national/EU campaigns, social media, TV/radio;
- Top 3 challenges in ADR are: i. low awareness, ii. traders not participating in ADR, iii. complexity of the landscape;
- Two thirds of ADR entities are in favour of digitalisation, although the final decision should be made by a human.

On 28 September 2022, the Commission launched in parallel a **forward-looking public consultation** and a **Call for Evidence**¹⁵³ to support the impact assessment for the revision of the ADR/ODR framework.¹⁵⁴ 111 responses and 23¹⁵⁵ responses were submitted to the OPC and the CfE respectively. The summary report¹⁵⁶ of the OPC was published on the Have your Say website on 16 February.

The responses to the CfE were more detailed and structured as compared to the input received through the OPC. 23 responses were received in total, although only 20 were taken into account:¹⁵⁷ 7 came from trader organisations, 5 from ADR entities, 5 from citizens, 3 from ECCs, 1 public authority and one from an academic institution. All respondents came from EU Member States: five from Belgium, three from France, Germany and Poland, two from Ireland, one from Austria, Finland, Malta, Slovakia, Spain and Sweden.

The salient points were the following:

¹⁵² Outcome summary report is available [here](#).

¹⁵³ https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13536-Consumer-rights-adapting-out-of-court-dispute-resolution-to-digital-markets_en

¹⁵⁴ Consumer Rights – adapting out-of-court dispute resolution to digital markets. Summary of the responses available [here](#).

¹⁵⁵ 20 were actually taken into account; one contribution was deleted for not being compliant with the European Commission's rules. Two other contributions were not within the scope.

¹⁵⁶ https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13535-Consumer-protection-strengthened-enforcement-cooperation/public-consultation_en

¹⁵⁷ One contribution from a citizen was deleted for not being compliant with the European Commission's rules. Two other contributions were not within the scope.

- The **quality criteria** for ADR entities (impartiality, independence, affordability, timely case-handling, sufficient understanding of EU consumer law, equal representation of consumer and trader organisations at governance structures) are crucial for consumer trust in ADR. NCAs should enhance supervision to ensure quality ADR across the EU;
- **Cross-border ADR** requires strengthening (e.g., ADR bodies should be able to work in English and other EU languages, more collaboration between ADR entities at EU level, clarity on the applicable law, etc.
- **Incentivize traders to use ADR**, especially where it's not mandatory. Repealing the ODR regulation benefits SMEs. Avoid placing the entire fee burden on traders.
- Implement **safeguards to protect traders** from vexatious disputes launched by consumers who fail to engage in good faith.
- **While collective ADR is cost-effective, some doubt the capacity of ADR entities** and prefer registered collective entities to handle such disputes.
- **Invest more in ADR**: awareness campaigns, AI tool development, case management improvements, and automated translation services.
- **Improve ADR accessibility** by limiting the number of ADR entities, filling coverage gaps, protecting vulnerable consumers, and preserving the human element despite increasing digitalization.
- Given the rapid development of digital markets, **consider extending the ADR directive scope to non-EU traders, pre-contractual disputes, and B2C disputes.**
- **Align the ADR Directive revision with the Digital Services Act (DSA) regarding online platforms' dispute resolution obligations.**¹⁵⁸
- Tackle the **lack of effectiveness of the ODR platform** (given the low number of disputes resolved through it). Some stakeholders see the potential of retaining the ODR platform to resolve cross-border disputes and be used in collective disputes, provided that the system is upgraded.
- Support principle-based rules, preserve minimum harmonization, and allow flexibility for traders to compete with excellent customer service.

CONCLUSIONS AND CONSIDERATION OF THE FEEDBACK BY THE COMMISSION

¹⁵⁸ Where the disputes are not solely about the seller-buyer contractual relationship, but involve the platforms' services, the DSA states that recipients of the service shall be entitled to select an out-of-court dispute settlement body certified by the Digital Service Coordinator.

In general, stakeholders are in favor of enhancing the EU ADR framework and adapting it for digital markets, particularly by:

- **broadening the geographical and material scope** of the ADR Directive;
- **increasing trader participation** in ADR, and ensuring enforcement of ADR outcomes;
- **facilitating cross-border ADR**;
- introducing **safeguards for vulnerable consumers** who lack digital skills.

Some stakeholders (mainly consumer organisations such as BEUC) have called for making participation in ADR **mandatory for traders**, but this change is strongly opposed by several Member States who see potential **conflicts with their constitutional rules** regarding access to justice. Other Member States have already implemented mandatory ADR for disputes below specific thresholds and/or in particular problematic sectors. This notwithstanding, incentivising participation in ADR is seen as a major area of concern.

The enhancement of collective ADR has also been identified as an important goal for the revision. This mechanism is already present in the national legislation of several Member States, but its uptake remains limited. Stakeholders have urged the Commission to take action in promoting the use of collective ADR. At the same time, **the importance of entrusting to Member States** the implementation of collective ADR, in accordance with the minimum harmonization approach of the Directive, has been highlighted.

Although some stakeholders initially proposed enhancing the **ODR platform instead of discontinuing it by repealing the ODR Regulation**, many of them were convinced by the available data presented by the Commission that replacing it with user-friendly tools for improved signposting is **a more efficient approach**.

Finally, stakeholders highlighted that other **non-legislative measures** are necessary to improve the ADR framework, in particular:

- awareness-raising on the benefits of ADR;
- strengthened monitoring to ensure that ADR entities comply with the quality requirements laid down by the Directive;
- more investment in capacity-building and digital infrastructure for ADR entities;
- promotion of good governance at national level;
- more exchange of best practices at national, regional and EU level.

ANNEX 3: WHO IS AFFECTED AND HOW?

1. Practical implications of the initiative

The initiative will impact consumers, businesses, the Commission, ADR competent authorities and ADR entities.

2. Summary of costs and benefits

| I. Overview of Benefits (total for all provisions) – Preferred Option | | |
|--|--|--------------------------|
| Description | Amount | Comments |
| <i>Direct benefits</i> | | |
| Reduction of information disclosure obligations | EUR 264 million annually | Businesses |
| Replacing ODR Platform | EUR 370 million annually EUR 500,000 annually | Businesses Commission |
| Reduction of detriment | EUR 33 million annually | Consumers |
| <i>Administrative cost savings related to the ‘one in, one out’ approach</i> | | |
| Direct | EUR 634 million annually | Businesses |

| II. Overview of costs – Preferred option | | | | | | | |
|--|-------------------------|--------------------|-----------|------------|--|-----------------|-----------|
| | | Citizens/Consumers | | Businesses | | Administrations | |
| | | One-off | Recurrent | One-off | Recurrent | One-off | Recurrent |
| Option C | Direct adjustment costs | | | | EUR 2.6 million annually for duty of reply EUR 25 million annually for ADR entities for extra disputes, at the net of bundling cases EUR 11 million annually for putting platforms in compliance | | |
| <i>Costs related to the ‘one in, one out’ approach</i> | | | | | | | |

| | | | | | | | |
|--------------|-------------------------|--|--|--|------------------|--|--|
| Total | Direct adjustment costs | | | | EUR 38.6 million | | |
|--------------|-------------------------|--|--|--|------------------|--|--|

3. Relevant sustainable development goals

| III. Overview of relevant Sustainable Development Goals – Preferred Option(s) | | |
|---|--|----------|
| Relevant SDG | Expected progress towards the Goal | Comments |
| SDG no. 16 – Peace, justice and strong institutions | <p>Target: 16.3 Promote the rule of law at the national and international levels and ensure equal access to justice for all.</p> <p>Indicator: 16.3.3 Proportion of the population who have experienced a dispute in the past two years and who accessed a formal or informal dispute resolution mechanism, by type of mechanism.</p> <p>Progress is expected as ADR uptake and awareness by consumers and businesses will increase as result of the preferred option.</p> | N/A |

ANNEX 4: ANALYTICAL METHODS

This annex lists some more details on the calculations of the economic impacts presented in Chapter 6 of the Impact Assessment. It also highlights the multi-criteria analysis that was used to compare the measures.

ASSESSMENT OF THE OPTIONS

| | Description of the measure | Economic Impacts | Social Impacts | Environmental Impacts | Fundamental Rights |
|---|---|--|--|--------------------------------|---|
| Option A Non-regulatory intervention | Policy Option A proposes a set of non-regulatory measures aimed at supporting and facilitating the work of ADR entities as well as raising awareness of ADR among consumers and traders. Besides, this policy option identifies a course of policy actions to address certain | Consumers/Citizens Annual training of all certified ADR entities would be expensive and would not bring immediate relief to consumers because not all the staff of the entities would participate to the training and not all new material would be promptly implemented. For cross-border disputes, the barriers of trust and languages would make training ineffective | Consumers/Citizens This measure is expected to have positive impacts of limited magnitude. Clear and comprehensive information about ADR procedures and outcomes could enhance consumers confidence in the fairness and effectiveness of ADR mechanisms but it is all based on the good will of the industry and of ADR entities | All Stakeholders N/A | Consumers/Citizens Since Policy Option A is non-regulatory in nature, its impact on fundamental rights is expected to be limited. Nevertheless, the implementation of specific policy measures within this option, such as awareness-raising campaigns and the use of standardized templates for information exchange between alternative |

| | | | | | |
|--|--|---|---|--|--|
| | <p>aspects that are currently not adequately covered in the Directive.</p> | <p>because the solution to these barriers are more structural and cannot be provided with trainings of short duration.</p> <p>A self-regulatory approach of creating guidelines with best practices is expected to have a limited positive impact on the reduction of consumer detriment in the long run.</p> <p>Creating a standardized, easy-to-understand information template that ADR entities could use to provide clear and comprehensive information about their procedures and outcomes to consumers and businesses in different languages is also</p> | <p>and cannot significantly address the low awareness of consumers. The trainings could create some jobs but their implementation would have limited impacts on the overall low level of awareness.</p> | | <p>dispute resolution (ADR) entities in cross-border disputes, could potentially enhance consumer protection in accordance with Article 38 CFREU.</p> |
|--|--|---|---|--|--|

| | | | | | |
|--|--|--|---|--|-------------------------------------|
| | | <p>expected to have limited economic impacts. It could help to reduce a bit of consumer detriment on cross-border disputes, but its effect is expected to be very marginal.</p> <p>The effect of AI tools for instant translation of documents has an uncertain effect on consumer detriment.</p> | | | |
| | | <p>Businesses</p> <p>A self-regulatory approach of creating guidelines with best practices would create costs to the industry, in particular intermediaries.</p> <p>The effect of AI tools for instant translation of documents on businesses willing to participate to an ADR with the consumer is far to be demonstrated.</p> | <p>Businesses</p> <p>This measure is expected to have positive impacts of limited magnitude. Clear and comprehensive information about ADR procedures and outcomes could enhance business confidence in the fairness and effectiveness of ADR mechanisms but it is all based on the good</p> | | <p>Businesses</p> <p>N/A</p> |

| | | | | | |
|--|--|--|--|--|--------------------------|
| | | | will of the industry and of ADR entities and cannot significantly address the low awareness of businesses. | | |
| | | SME Test Intermediaries are not likely to be SMEs. They could enjoy the AI tools for translation if involved in a dispute but its effect is far to be demonstrated. | SME Test Limited positive effect on awareness. | | SME Test N/A |
| | | Commission Maintaining the current scope of ADR and provide trainings to ADR entities to improve understanding of digital and cross-border disputes and set up system to exchange best practices would be a recurrent cost for the public sector because of the highly dynamic evolution of digital markets. | Commission N/A | | Commission N/A |
| | | A self-regulatory | | | |

| | | | | | |
|--|--|--|-------------------------------------|--|-------------------------------------|
| | | <p>approach of creating guidelines with best practices would also create similar costs to the public sector to streamline the works.</p> <p>Awareness raising campaigns are expensive to be effective in view of the large number of consumers that need to be contacted (several millions of euro for the Commission or NCAs in total).</p> <p>The implementation of AI tools for instant translation of documents could be co-funded by the Commission through grants.</p> | | | |
| | | <p>Member States Maintaining the current scope of ADR and provide trainings to ADR entities to</p> | <p>Member States N/A</p> | | <p>Member States N/A</p> |

| | | | | | |
|--|--|---|--|--|--|
| | | <p>improve understanding of digital and cross-border disputes and set up system to exchange best practices would be a recurrent cost for the public sector because of the highly dynamic evolution of digital markets.</p> <p>A self-regulatory approach of creating guidelines with best practices would also create similar costs to the public sector to streamline the works.</p> <p>Awareness raising campaigns are expensive to be effective in view of the large number of consumers that need to be contacted (several millions of euro for the Commission or NCAs in total).</p> | | | |
|--|--|---|--|--|--|

| | | | | | |
|--|--|---|----------------------------|--|----------------------------|
| | | ADR entities A system to exchange best practices would not be ideal because it would impose costs to all parties involved and would not immediately go into the direction of effectively solving disputes between consumers and businesses. Adoption of AI tools for instant translation of documents surely would help ADR entities in dealing with cross-border cases. | ADR entities N/A | | ADR entities N/A |
| | | | | | |

| Description of the measure | Economic Impacts | Social Impacts | Environmental Impacts | Fundamental Rights |
|----------------------------|------------------|----------------|-----------------------|--------------------|
|----------------------------|------------------|----------------|-----------------------|--------------------|

| | | | | | |
|---|--|---|----------------------------------|--------------------------------|---|
| Option B Option A¹⁵⁹ + Procedural and geographical scope revision | Policy Option B aims to amend the existing EU legal framework governing ADR by addressing the shortcomings described under section 2 through the inclusion of new provisions that would complement the non-legislative initiatives described under Policy Option A). | Consumers/Citizens Reduced detriment of up to about EUR 1.5 million every year, ¹⁶¹ i.e. up to EUR 13 million in 10 years because of the extra disputes. | Consumers/Citizens N/A | All Stakeholders N/A | Consumers/Citizens By clarifying that ADR procedures can be used also to resolve disputes with traders established outside of the EU, Policy Option B would provide consumers with an additional avenue to obtain redress, thereby strengthening their right to an effective remedy pursuant to Article 47 of the CFREU. |
| | Calculation on number of disputes: 5% third-country traders dispute ¹⁶⁰ | Consumers would gain time consulting the database on the identities of retailers who do not engage in ADR, knowing which are their chances of engaging into an ADR with the business they are having a problem with. On top of that, they would also know which businesses are more risky to do trade | | | |

¹⁵⁹ Impacts of Option A also apply for Option B.

¹⁶⁰ ECC data mentioned in the Information gathering study.

¹⁶¹ 9,000*90% (UK figure on likelihood for consumer to reach an amicable settlement https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/698442/Final_report_-_Resolving_consumer_disputes.pdf)

*EUR 185 (average value of an ADR dispute, proxy data from EU ODR Platform). In an ADR, as the solution is amicable, the solution offered to consumers would very likely be smaller than the total, hence the EUR 185 per dispute are to be considered a maximum value.

| | | | | | |
|--|---|--|---|--|---|
| | over 180,000 current disputes = 9000 disputes more. | with. | | | |
| | | <p>Businesses</p> <p>Promoting the use of trust-marks for businesses always participating in ADR would be a direct consequence of the database. Businesses having a 100% participation could use this trust-mark. It could come with some costs to adapt their website but would boost their market reputation and might increase their sales through more consumer confidence. The provision on the extension of the scope to third-country traders would level the playing field in favour of EU traders, correcting a market failure and enhancing</p> | <p>Businesses</p> <p>The database of businesses refusing to participate to ADR would come at the price of some reputational damage for those businesses who would fit in. The inclusion of third-country traders into the scope of the Directive would level the playing field in favor of EU traders, correcting a market failure. However, this would depend from the good will of third-country traders to engage into the disputes, and it is expected that it will be limited to the ones with a large customer base in the EU.</p> | | <p>Businesses</p> <p>The naming and shaming of traders who legitimately refuse to engage in ADR could potentially encroach on their freedom to conduct business under Article 16 of the CFREU and raise serious issues regarding the presumption of innocence under Article 47 of the CFREU.</p> |

| | | | | | |
|--|--|--|---|--|---|
| | | competitiveness. | | | |
| | | SME Test The same would apply to SMEs, the wide majority of businesses. | SME Test The same would apply to SMEs, the wide majority of businesses. | | SME Test The same would apply to SMEs, the wide majority of businesses. |
| | | Commission N/A | Commission N/A | | Commission N/A |
| | | Member States Allowing national authorities to publicly disclose identity of retailers who do not engage in ADR would entail the preparation and the maintenance of such a database, with costs associated for NCAs (0.5 FTEs | Member States N/A | | Member States N/A |

| | | | | | |
|--|--|---|---|--|----------------------------|
| | | at EUR 33.500 per FTE ¹⁶² , i.e. EUR 450,000 per year considering all MS, EUR 4 million in 10 years plus IT costs). | | | |
| | | ADR entities Cost of up to EUR 2,700,000 annually to process the new disputes (up to EUR 24 million in 10 years). ¹⁶³ Strengthening quality criteria to ensure that natural persons in charge of ADR are qualified for cross-border disputes (legal and linguistic expertise) would entail costs for ADR entities, to hire or train qualified staff. This depends from the actual ADR entity. | ADR entities Strengthening quality criteria for lawyers working for ADR entities would improve qualifications of ADR professionals. | | ADR entities N/A |

¹⁶² <https://ec.europa.eu/eurostat/web/products-eurostat-news/w/ddn-20221219-3>. Annual average salaries in the EU.

¹⁶³ EUR 300 per dispute, see problem definition. Discount factor for actualised value: 3%.

| | Description of the measure | Economic Impacts | Social Impacts | Environmental Impacts | Fundamental Rights |
|---|--|---|---|--|--|
| Option C ¹⁶⁴ Material scope amendments and new business obligations | <p>Policy Option C) seeks to address the problems outlined above by amending a number provisions of the current Directive and adding new obligations for traders. It also assigns new responsibilities to entities that do not currently play a role under the Directive.</p> <p>Calculation on number of disputes: This option would make the number</p> | <p>Consumers/Citizens If consumers would win 90% of the times (with businesses accepting the result of the ADR procedure), this would reduce detriment of about EUR 33 million every year,¹⁷² i.e. EUR 290 million in 10 years.</p> <p>The behavioural study conducted on ADR information requirements¹⁷³ showed that the currently required ODR link addition to generic information mentioning ADR as a redress solution does</p> | <p>Consumers/Citizens The certainty to rapidly obtain an answer to their complaints brought to a proper ADR would reduce drastically the stress of consumers who would better assess the feasibility of the various concrete possibilities to solve their issue. The clarified and expanded scope of application of the Directive would also diminish stress for those disputes which currently can only have their solution in court. Replacing the</p> | <p>All Stakeholders Limiting reporting obligations would have a limited positive impact on the carbon footprint of printing such reports. Self-certification mechanisms would also avoid the need to prepare and print large reports for official certification. Expanding the scope of the Directive to include extra-</p> | <p>Consumers/Citizens The widened material and geographical scope of the Directive would ensure that consumers have access to private redress for a broader range of disputes, thereby reinforcing their right to an effective remedy as laid down by Article 47 of the CFREU. The measures aimed at ensuring through a self-certification mechanism that PODR systems adhere to high-quality standards would enhance consumer</p> |

¹⁶⁴ The option also includes the extension of the scope to third-country traders: the numbers are the ones assessed within option B and they are not included here are those numbers strongly depend from the willingness of third-country traders to engage into an ADR dispute and are the most optimistic scenario.

¹⁷² 200,000*90%*EUR 185.

¹⁷³ Behavioural study on disclosure of ADR information to consumers by traders and ADR entities.

| | | | | | |
|--|--|--|--|---|--|
| | <p>of potential ADR disputes increase by about 4.5% as a direct consequence of the clarification that the material scope of the Directive should cover disputes not explicitly covered in contracts and other relevant consumer law provisions.¹⁶⁵ 4.5% of 2,250,000 consumers seeking redress potentially with ADR¹⁶⁶ = 100,000 new eligible disputes.¹⁶⁷ Baseline = 300,000 eligible disputes, Option C eligible disputes =</p> | <p>not provide any positive impact on consumer's intention to use ADR as a solution. Hence, consumers would not suffer any detriment with this information removal.</p> <p>The behavioural study also says that general information on ADR is beneficial. However, consumers are in most cases misled by those mandatory statements by businesses, because businesses need to insert the information in their terms and conditions but they do not have to participate</p> | <p>ODR Platform would have a negative social impact on those jobs as MS contact points connected to its implementation (about 50 FTEs throughout the EU) but this is offset by positive social impact on jobs created within the whole ECC framework (which could be of similar magnitude and even re-absorbing the same staff).</p> | <p>contractual disputes would allow consumers to seek redress for damages resulting from unfair commercial practices, including those related to misleading green claims. The possibility of obtaining redress against greenwashing through ADR would reinforce the efforts of public consumer protection authorities and contribute to achieving the</p> | <p>protection (Article 38 CFREU).</p> |
|--|--|--|--|---|--|

¹⁶⁵ ECC data (see Chapter 3 below in this Annex) on 2022 EU complaints' categorization used as a proxy for general ADR disputes. Complaints on general information request, lack of confirmation, other misleading actions or omissions, refusal to sell/supply product or discrimination, and unfair and aggressive commercial practices, are considered as the extension of the scope under this policy measure and together account for 4.47% of all complaints.

¹⁶⁶ See problem definition, calculated through data of the Consumer Conditions Survey.

¹⁶⁷ Assumed eligible. One consumer is also assumed to have maximum one dispute every year.

| | | | | | |
|--|--|---|-------------------------------------|--|--|
| | 300,000+100,000 = 400,000 eligible disputes. 240,000 would become disputes ¹⁶⁸ and about 128,000 would remain unanswered. ¹⁶⁹ A share of the 128,000 potential disputes for which businesses would now have to reply would turn into actual disputes, with negative answers from businesses resulting in enhanced certainty about consumer claims and empowering them to take (or not) action elsewhere. Out of these 128,000 | to an ADR. This only increases confusion among consumers and this policy option corrects this. | | goals of the European Green Deal strategy. | |
| | | <p>Businesses</p> <p>If a duty to reply is established, it is assumed that the cost for businesses of sending a single reply is about EUR 20 for preparation, processing and sending, resulting in a total cost of EUR 2.6 million per year, or EUR 23 million in 10 years.¹⁷⁴</p> <p>The duty of reply would replace the need of <u>disclosing information on ADR</u>, for businesses not linked to any</p> | <p>Businesses</p> <p>N/A</p> | | <p>Businesses</p> <p>The measures aimed at ensuring through a self-certification mechanism that PODR systems adhere to high-quality standards would not impose burdensome obligations that would negatively impact on the platforms' freedom to conduct business (Article 16 of the CFREU). Although the introduction of a duty of reply would require traders to examine any potential disputes forwarded to them by ADR entities, the fact</p> |

¹⁶⁸ The ratio 180,000/300,000 applying now to 400,000.

¹⁶⁹ 96,000 as seen in the problem definition, i.e. 32% of total, which out of 400,000 is 128,000. It is unknown how many unanswered notifications are from SMEs and how many from large businesses.

| | | | | | |
|--|--|--|--|--|---|
| | <p>potential disputes about 77,000 every year would become real disputes¹⁷⁰, mostly linked to businesses previously unaware of the potential of ADR, for a total of nearly 200,000 new disputes under this policy option¹⁷¹ and 380,000 disputes in total.</p> | <p>particular ADR entity (64%¹⁷⁵ of the total). It is known from the Impact Assessment linked to the current ADR Directive¹⁷⁶ that the inflation adjusted costs of providing information to consumers are about EUR 310 per business.¹⁷⁷ These are mostly one-off. Every year, for newly established businesses who do not adhere to an ADR entity,¹⁷⁸ the total savings would</p> | | | <p>that businesses are not obliged by the Directive to participate in ADR ensures that their freedom to conduct business is observed.</p> |
|--|--|--|--|--|---|

¹⁷⁴ 3% discount factor applies for actualising values.

¹⁷⁰ Applying the same logic that approximately 60% of businesses, if solicited by ECCs, normally find an agreement with the consumers. Hence 60% of businesses who are solicited to reply would reply positively.

¹⁷¹ 300,000-180,000 in the baseline +77,000.

¹⁷⁵ Consumer Conditions Scoreboard - Consumers at home in the Single Market, 2019, [consumers-conditions-scoreboard-2019_pdf_en.pdf \(europa.eu\)](#).

¹⁷⁶ Impact Assessment accompanying the document Proposal for a Directive of the European Parliament and of the Council on Alternative Dispute Resolution for consumer disputes (Directive on consumer ADR) and Proposal for a Regulation of the European Parliament and of the Council on Online Dispute Resolution for consumer disputes (Regulation on consumer ODR) {COM(2011) 793 final} {SEC(2011) 1409 final}.

¹⁷⁷ EUR 254 x 1.2217 as cumulative inflation between 2012 and 2023 (in2013dollars.com/Europe).

¹⁷⁸ Eurostat: 500,000 new wholesalers and retailers every year in the EU x 64% = 320,000.

| | | | | | |
|--|--|---|--|--|--|
| | | <p>then be EUR 99 million annually,¹⁷⁹ i.e. EUR 870 million in 10 years; a share of the costs of “adding information on ADR in contracts, invoices, receipts, websites, brochures/leaflets”¹⁸⁰ would then be saved also for current businesses, for a total of EUR 165 million per year, i.e. EUR 1.4 billion in 10 years (EUR 2.3 billion in 10 years in total as savings for businesses).</p> <p>On the replacing of the ODR platform, businesses operating online would not need to maintain an e-mail address with costs</p> | | | |
|--|--|---|--|--|--|

¹⁷⁹ 320,000 x EUR 310.

¹⁸⁰ 35% of the total costs (2011 Impact Assessment), i.e. EUR 109. We assume 10% of them would need reprint every year, for a cost of EUR 11 per existing business who does not adhere to an ADR entity (23,000,000 x 64% = 15,000,000).

| | | | | | |
|--|--|--|--|--|--|
| | | <p>linked to reading and processing the information. The average cost of maintaining this e-mail address, considering the due diligence of conducting business which would require to read the correspondence daily, is assumed equal to EUR 0.5 per day,¹⁸¹ or EUR 100 per year. The total benefit for businesses is then EUR 370 million per year, i.e. EUR 3.3 billion in 10 years. Also, newly established businesses in the EU in the next 10 years would not incur into costs to provide ODR information on their website, but this</p> | | | |
|--|--|--|--|--|--|

¹⁸¹ ADR dispute requests (500,000 per year) would rarely arrive on the mailbox of a business (about 3,700,000 retailers operates online, Eurostat).

| | | | | | |
|--|--|--|--|--|--|
| | | <p>estimate is already included in the calculations linked to the removal of ADR information, presented above.</p> <p>About the self-certification of PODR: marketplaces selling in the EU are 438 (with 1000 Internet domains),¹⁸² half of them might have an ODR platform. With perceived compliance to quality criteria set in the ADR Directive at about 20%, it can be assumed that actual full compliance would be for 50% of these businesses. That would make it 110 businesses having to improve their staff with lawyers expert in consumer law</p> | | | |
|--|--|--|--|--|--|

¹⁸² CBC Commerce, <https://www.cbcommerce.eu/blog/2022/09/21/top-100-marketplaces-in-europe-annual-ranking-2022-out-now/>.

| | | | | | |
|--|--|--|-----------------------------------|--|--|
| | | <p>supervising the dispute resolution process (EUR 100,000 per year) and automatic translation tools (lump sum of EUR 10,000). Total costs in 10 years would amount to EUR 97 million (EUR 11 million per year).</p> <p>Competitiveness of EU businesses will be impacted positively by this option, because the savings can be used to boost the attractiveness of their prices, and possibly foster innovation.</p> | | | |
| | | <p>SME Test</p> <p>It is not known how many disputes are with SMEs and how many are with large businesses, so the costs associated to the duty of reply could in principle be shared</p> | <p>SME Test</p> <p>N/A</p> | | <p>SME Test</p> <p>N/A (PODR are not likely to be managed by SMEs).</p> |

| | | | | | |
|--|--|---|---------------------------------------|--|---------------------------------------|
| | | <p>with SMEs. However, as SMEs are the wide majority of businesses, they will also be the main beneficiaries of the information provision cost savings both connected to the replacing of the ODR platform and ADR in general.</p> <p>Competitiveness of EU SMEs will be impacted positively by this option, because the savings can be used to boost the attractiveness of their prices, and possibly foster innovation.</p> | | | |
| | | <p>Commission Replacing the ODR platform with signposting tools will save the European Commission about</p> | <p>Commission N/A</p> | | <p>Commission N/A</p> |

| | | | | | |
|--|--|--|--|-----------------------------|--|
| | | EUR 500,000 per year, i.e. EUR 4.4 million in 10 years. ¹⁸³ | | | |
| | Member States N/A | Member States N/A | | Member States N/A | |
| | ADR entities These 200,000 new disputes might cost approximately up to EUR 60 million to handle annually (EUR 527 million in 10 years), for ADR entities to be funded in different ways. ¹⁸⁴ Nevertheless, this is not realistic as ADR entities would experience economies of scale after a certain point, and only marginal costs of adding extra disputes | ADR entities N/A | | ADR entities N/A | |

¹⁸³ EUR 600,000 every year saved if the ODR platform stops to be maintained, minus EUR 100,000 every year for other developed solutions to redirect consumers to the right ADR entity (e.g. artificial intelligence-powered lawbots/chatbots).

¹⁸⁴ EUR 300 per dispute, see problem definition.

| | | | | | |
|--|--|--|--|--|--|
| | | <p>should be taken into account. Also, the costs that these additional disputes entail pre-empt larger costs to be incurred by several parties if the cases end up in court. On top of this, <u>allowing the bundling of similar cases by ADR entities</u> would mean that, with a total of 380,000 disputes per year, if only 10% of them become part of some bundle,¹⁸⁵ it would mean offsetting costs for entities of EUR 11 million every year,¹⁸⁶ i.e. EUR 97 million in 10 years. Considering the economies of scale, the net extra costs for ADR entities can be between EUR 0 and</p> | | | |
|--|--|--|--|--|--|

¹⁸⁵ This is a conservative assumption related to potential savings.

¹⁸⁶ $10\% \times 380,000 = 38,000$ disputes* EUR 300.

| | | | | | |
|--|--|---|--|--|--|
| | | EUR 49 million per year (EUR 25 million on average), i.e. between EUR 0 and EUR 430 million in 10 years (EUR 215 million in 10 years on average). ADR entities which would incur some costs can also decide to pass them to the industry to participate, knowing that the industry would still save compared to the costs of going to court. | | | |
|--|--|---|--|--|--|

| | Description of the measure | Economic Impacts | Social Impacts | Environmental Impacts | Fundamental Rights |
|--|---|---|---|------------------------------------|---|
| Option D¹⁸⁷ Architectural changes and increased level of harmonization | Policy option D is the most ambitious among the options considered because it seeks | Consumers/Citizens If consumers win 90% of the times (with businesses accepting the result of the ADR | Consumers/Citizens Stress for consumers might increase because mandating ADR usage across the | All Stakeholders N/A | Consumers/Citizens The architectural changes proposed by this policy option would only affect |

¹⁸⁷ The option also includes the extension of the scope to third-country traders: the numbers are the ones assessed within option B and they are not included here are those numbers strongly depend from the willingness of third-country traders to engage into an ADR dispute and are the most optimistic scenario.

| | | | | | |
|--|--|--|---|--|---|
| | <p>to significantly increase the level of harmonization of the Directive and restructure the existing domestic ADR infrastructure in Member States.</p> <p>Calculation on number of disputes: If ADR were to be mandatory for traders above a certain threshold, up to all the 300,000 eligible disputes would be solved by ADR (up to 120,000 more than the baseline).¹⁸⁸</p> | <p>procedure), a reduction in consumer detriment of about EUR 20 million per year,¹⁸⁹ i.e. up to EUR 176 million in 10 years.</p> <p>Asking MS to designate a residual entity in charge of digital disputes and the Commission one for ADR cross-border complaints including disputes with non-EU traders would be beneficial to consumers as there would be a one stop shop approach to solve such disputes and would be necessary and quicker in a framework where ADR is mandatory</p> | <p>most problematic economic sectors would create an extra redress layer which would produce a result which is not binding to the parties. If businesses that do not will to engage in such a process are obliged to do so, they might also reject the verdict of the ADR and oblige consumers to bring them to court or withdraw the case. Replacing the ODR Platform would have a negative social impact on those jobs as MS contact points connected to its implementation (about 50 FTEs throughout the EU). The new empowered residual</p> | | <p>national authorities and the Commission, without impacting fundamental rights. On the other hand, making participation in ADR mandatory would provide consumers with a quick and affordable way to resolve their disputes, regardless of its nature, reinforcing their right to an effective remedy under Article 47 of the CFREU and promoting a high level of consumer protection in accordance with Article 38 of the CFREU. However, this very same measure could potentially have</p> |
|--|--|--|---|--|---|

¹⁸⁸ There is no information on the size of the businesses more involved with ADR disputes, but it is expected that a large number of the 300,000 eligible disputes is with large businesses.

¹⁸⁹ 120,000*90%*EUR 185.

| | | | | | |
|--|--|---|--|--|--|
| | | <p>and confusion could affect consumers on where to go to obtain redress.</p> <p><u>Obliging MS to have only one certified ADR body per retail sector,</u> complemented by the residual cross-border and digital ADR, would also act to simplify the flow of consumers in need to solve disputes in a framework where ADR is mandatory. This measure would increase competition among ADR entities in the same sector, in order to acquire the only available certification. In turn, this would make ADR faster and of a better quality and would boost the reduction of consumer detriment. If disputes were three months faster, the</p> | <p>entities created might absorb some of these jobs.</p> | | <p>negative impact on the right to an effective remedy as Member States could implement it by requiring participation in ADR as a condition for access to court.</p> |
|--|--|---|--|--|--|

| | | | | | |
|--|--|---|------------------------------|--|------------------------------|
| | | EUR 56 million at stake at any moment ¹⁹⁰ would generate about EUR 280,000 of interest per year ¹⁹¹ , i.e. EUR 2,500,000 in 10 years at sure disposal of consumers or businesses winning the dispute. | | | |
| | | Businesses Engaging in these disputes against their will would make businesses incur into costs of participation, i.e. time and legal fees, even in the case they would likely refuse the outcome of the process (which could lead potentially to further expenses in court). Assuming that | Businesses N/A | | Businesses N/A |

¹⁹⁰ 300,000*EUR 185.

¹⁹¹ At 2% interest rate, in a quarter of a year EUR 56 million generate EUR 280,000.

| | | | | | |
|--|--|---|--|--|--|
| | | <p>for the average dispute where not big amounts are a stake businesses would spend EUR 100 to prepare and participate to it, cumulative costs would amount to EUR 12 million every year,¹⁹² i.e. up to EUR 105 million in 10 years.</p> <p>Extending the quality criteria of the ADR directive to platform's dispute resolution systems (under supervision and audits from ADR NCAs), needed in Option D because of the mandatory nature of ADR, would have similar impacts as in Option C with the difference that here there is no self-</p> | | | |
|--|--|---|--|--|--|

¹⁹² EUR 100 x 120,000 disputes.

| | | | | | |
|--|--|---|--|--|--|
| | | <p>certification but an actual certification process with audits. Hence, as in Option C total costs in 10 years for large businesses to comply would amount to EUR 97 million, but in addition they would have to file the reports, for a total of 0.5 FTEs each business the first time and 0.1 FTE every year to follow the file (at EUR 33.500 per FTE¹⁹³), i.e. EUR 5,000,000 in 10 years.¹⁹⁴ The total cost for large business would then be EUR 102 million in 10 years.</p> <p>Obliging MS to have only one certified</p> | | | |
|--|--|---|--|--|--|

¹⁹³ <https://ec.europa.eu/eurostat/web/products-eurostat-news/w/ddn-20221219-3>. Annual average salaries in the EU.

¹⁹⁴ EUR 33,500*0,5 FTEs*110 businesses = EUR 1,842,500, and EUR 33,500*0,1 FTEs*110 businesses for 10 years (3% discount rate) = EUR 3,237,000. Total = EUR 5 million.

| | | | | | |
|--|--|--|--|--|--|
| | | <p>ADR body per retail sector, complemented by the residual cross-border and digital ADR, would also act to simplify the flow of consumers in need to solve disputes in a framework where ADR is mandatory. This measure would increase competition among ADR entities in the same sector, in order to acquire the only available certification. In turn, this would make ADR faster and of a better quality and would boost the reduction of consumer detriment. If disputes were three months faster, the EUR 56 million at stake at any moment¹⁹⁵ would generate about EUR</p> | | | |
|--|--|--|--|--|--|

¹⁹⁵ 300,000*EUR 185.

| | | | | | |
|--|--|---|--|--|--|
| | | <p>280,000 of interest per year¹⁹⁶, i.e. EUR 2,500,000 in 10 years at sure disposal of consumers or businesses winning the dispute.</p> <p>As in Option C, and as now ADR is mandatory, <u>replacing the ODR platform with signposting tools</u> needs to be done and will save businesses EUR 3.3 billion in 10 years.¹⁹⁷</p> <p>Competitiveness of EU businesses will be impacted positively by this option, because the savings can be used to boost the attractiveness of their</p> | | | |
|--|--|---|--|--|--|

¹⁹⁶ At 2% interest rate, in a quarter of a year EUR 56 million generate EUR 280,000.

¹⁹⁷ See assessment of Option C. To this it should be added about EUR 20 of savings for new businesses operating online (80,000, Eurostat) that do not need to place the ODR link on their website anymore (in the assessment of Option C this was included in the ADR disclosure of information related savings), i.e. EUR 1,600,000 per year or EUR 14 million in 10 years.

| | | | | | |
|--|--|--|--------------------------------|--|--------------------------------|
| | | prices, and possibly foster innovation. | | | |
| | | <p>SME Test</p> <p>SMEs will in particular enjoy the savings connected to the information provision linked to the ODR platform replacement.</p> <p>However, the mandatory nature of ADR would be detrimental for them, as they would lose significant time and resources to participate to proceedings without need to abide to their results.</p> <p>Competitiveness of EU SMEs will be impacted positively by this option, because the savings can be used to boost the attractiveness of their</p> | <p>SME Test N/A</p> | | <p>SME Test N/A</p> |

| | | | | | |
|--|--|--|---|--|---|
| | | prices, and possibly foster innovation. | | | |
| | | <p>Commission About asking MS to designate a residual entity in charge of digital disputes and the Commission one for ADR cross-border complaints including disputes with non-EU traders, even if automatic translation can be provided, the supervision of at least 1 FTE per language is envisaged. That would mean about EUR 770,500 per year¹⁹⁸, which in 10 years means EUR 7 million of costs for the Commission.</p> <p>As in Option C, and as now ADR is</p> | <p>Commission N/A</p> | | <p>Commission N/A</p> |

¹⁹⁸ EUR 33,500 x 23 extra languages on top of the language of the MS.

| | | | | | |
|--|--|--|-----------------------------|--|-----------------------------|
| | | mandatory, replacing the ODR platform with signposting tools needs to be done and will save the European Commission about EUR 4.4 million in 10 years. | | | |
| | | Member States The supervision and audits from ADR NCAs on extending the quality criteria of the ADR directive to platform's dispute resolution systems over 110 large businesses could translate into 10 audits per year of the cost of 2 FTEs (EUR 31,700 per FTE the average in MS ¹⁹⁹) and 2 more FTEs for supervising for a total of EUR 1,100,000 in 10 years. Six MS also do on- | Member States N/A | | Member States N/A |

¹⁹⁹ Eurostat, Average remuneration of national civil servants in central public administration.

| | | | | | |
|--|--|--|--|--|--|
| | | <p>the-spot checks on ADR entities as part of their monitoring mechanisms.²⁰⁰ At EUR 10,000 each, in 10 years this would be a further EUR 500,000 for NCAs. Total costs for NCAs would then amount to EUR 1,600,000 in 10 years.</p> <p>About asking MS to designate a residual entity in charge of digital disputes and the Commission one for ADR cross-border complaints including disputes with non-EU traders The entity designated by the MS would then be empowered with legal experts in disputes connected with the digital world. At least</p> | | | |
|--|--|--|--|--|--|

²⁰⁰ Information gathering for assisting the Commission in complying with its obligation under Article 26 (“reporting”) of the ADR Directive and Article 21 (“reporting”) of the ODR Regulation.

| | | | | | |
|--|--|--|----------------------------|--|----------------------------|
| | | 2 FTEs of legal experts in digital disputes per MS would mean EUR 1,800,000 per year, ²⁰¹ i.e. EUR 16 million of costs in 10 years for the 27 MS. | | | |
| | | ADR entities 120,000 extra disputes would mean EUR 36 million per year in handling by the entities , i.e. a cost of up to EUR 316 million in 10 years. As in the assessment of Option C, ADR entities would experience economies of scale after a certain point, and only marginal costs of adding extra disputes should be taken into account. The <u>bundling measure</u> (collective ADR redress) would also have an offsetting | ADR entities N/A | | ADR entities N/A |

²⁰¹ EUR 33,500 x 2 FTEs x 27 MS.

| | | | | | |
|--|--|---|--|--|--|
| | | <p>effect, if 10% of disputes are bundled the benefit would be up to EUR 9 million per year or EUR 79 million in 10 years.²⁰²</p> <p>The total costs for ADR entities (which they could pass to the industry) would then be between EUR 0 and EUR 27 million per year (EUR 14 million on average), i.e. between EUR 0 and EUR 237 million in 10 years (EUR 119 million in 10 years on average).</p> <p>On obliging MS to have only one certified ADR body per retail sector, some ADR entities that were certified and now lose the certification would certainly lose part of their revenue.</p> | | | |
|--|--|---|--|--|--|

²⁰² 30,000*EUR 300 in 10 years with a 3% discount factor.

COMPARISON OF THE OPTIONS

In order to compare the options a multi-criteria analysis is provided considering the effectiveness, efficiency and coherence criteria. Different total scorings are provided to account for sensitivity analysis: a simple sum of the individual criteria scores, a scenario where effectiveness accounts for 80%, efficiency 10% and coherence 10% (effectiveness dominant), one where effectiveness accounts for 10%, efficiency 80% and coherence 10% (efficiency dominant), one where effectiveness accounts for 10%, efficiency 10% and coherence 80% (coherence dominant) and one where effectiveness accounts for 40%, efficiency 40% and coherence 20% (effectiveness & efficiency dominant). The highest scores for each system are in bold.

After the assessment of these impacts, for each policy option is presented a scoring for the three areas of effectiveness towards reaching each specific objective, efficiency to assess how this is reached and coherence with EU legislation. The scores are given with points from 0 to 5 and are used to compare the options. The score for effectiveness is given qualitatively based on the average performance of each policy option towards the reaching of each the objectives. It also takes into account the impacts which cannot be quantified. The score for coherence is also awarded qualitatively. The score for efficiency is based on the quantified net benefit of each policy option for all stakeholders and it gives an indication of the cost/benefit ratio for each option. A score of 5 is given to the most efficient option and the other scores are given in proportion, as per the following tables and formula.

Calculation of the efficiency score for all policy options:

| Measure | Benefits | Costs |
|---------|-----------------|----------------|
| A | not quantified | not quantified |
| B | 13.000.000 € | 28.000.000 € |
| C | 5.894.000.000 € | 238.000.000 € |
| D | 3.483.000.000 € | 350.000.000 € |

The standardised efficiency score for the MCA is calculated as $(5 \times \text{Net benefit} / \text{Best net benefit})$ and scores are as follows:

| Method 2 | Net benefit | Standardised for MCA |
|----------|-----------------|----------------------|
| A | 0 € | 0,00 |
| B | -15.000.000 € | -0,01 |
| C | 5.656.000.000 € | 5,00 |
| D | 3.133.000.000 € | 2,77 |

| Comparison of options | | | | | Sensitivity analysis | | | |
|-----------------------|---------------|------------|-----------|---------------|------------------------|---------------------|--------------------|---------------------------------------|
| Options | Effectiveness | Efficiency | Coherence | Equal weights | Effectiveness dominant | Efficiency dominant | Coherence dominant | Effectiveness and efficiency dominant |
| A | 2 | 0,0 | 1 | 1,0 | 1,4 | 0,6 | 1,0 | 1,0 |
| B | 3 | 0,0 | 2 | 1,7 | 2,2 | 1,0 | 1,8 | 1,6 |
| C | 4 | 5,0 | 5 | 4,7 | 4,4 | 4,8 | 4,8 | 4,6 |
| D | 3 | 2,8 | 3 | 2,9 | 3,0 | 2,9 | 3,0 | 2,9 |

Option C, Material scope amendments and new business obligations, is the preferred option under each of the five different systems of scoring. By consequence, it is the preferred option of this impact assessment.

ECC DATA ON COMPLAINTS

The table below shows data on ECC complaints from the year 2022, divided by category. The highlighted rows are likely to be complaints out of the scope of the current ADR Directive. They are the 4.47% of the total. This number is used in the assessment of options where the material scope of the Directive is increased.

| Nature of Complaint | Complaint | Question | Total | Complaint | Question | Total |
|--|-----------|----------|--------|-----------|----------|---------|
| General information request | 191 | 12268 | 12459 | 0,90% | 12,42% | 10,39% |
| Delayed delivery* | 118 | 781 | 899 | 0,56% | 0,79% | 0,75% |
| Partial delivery* | 276 | 829 | 1105 | 1,31% | 0,84% | 0,92% |
| Non delivery | 3250 | 13484 | 16734 | 15,39% | 13,65% | 13,96% |
| Lack of confirmation* | 149 | 731 | 880 | 0,71% | 0,74% | 0,73% |
| Lack of pre-contractual information* | 110 | 707 | 817 | 0,52% | 0,72% | 0,68% |
| Non-conformity- defective product* | 2489 | 8330 | 10819 | 11,79% | 8,43% | 9,02% |
| Non-conformity- wrong product* | 651 | 2171 | 2822 | 3,08% | 2,20% | 2,35% |
| Unsafe product/ caused injury or damage* | 59 | 353 | 412 | 0,28% | 0,36% | 0,34% |
| Privacy and data protection* | 21 | 130 | 151 | 0,10% | 0,13% | 0,13% |
| Commercial warranty or undertaking not honoured* | 124 | 446 | 570 | 0,59% | 0,45% | 0,48% |
| Packaging/ labelling/ instructions* | 21 | 65 | 86 | 0,10% | 0,07% | 0,07% |
| Other misleading actions or omissions* | 279 | 1897 | 2176 | 1,32% | 1,92% | 1,81% |
| Other termination of contract* | 1125 | 4481 | 5606 | 5,33% | 4,54% | 4,68% |
| Payment arrangements* | 682 | 3088 | 3770 | 3,23% | 3,13% | 3,14% |
| Refusal to sell/ supply product or discrimination* | 141 | 615 | 756 | 0,67% | 0,62% | 0,63% |
| Right of withdrawal (cooling off)* | 1991 | 6346 | 8337 | 9,43% | 6,42% | 6,95% |
| Subscription trap* | 351 | 2266 | 2617 | 1,66% | 2,29% | 2,18% |
| Unfair and aggressive commercial practices* | 184 | 925 | 1109 | 0,87% | 0,94% | 0,92% |
| Supplementary charges* | 348 | 2232 | 2580 | 1,65% | 2,26% | 2,15% |
| Unfair contract terms* | 59 | 360 | 419 | 0,28% | 0,36% | 0,35% |
| Passenger transport specific | 148 | 833 | 981 | 0,70% | 0,84% | 0,82% |
| Passenger transport specific - -Changes of schedule by the operator* | 250 | 917 | 1167 | 1,18% | 0,93% | 0,97% |
| Passenger transport specific - -Delay in respect of original schedule* | 970 | 3273 | 4243 | 4,59% | 3,31% | 3,54% |
| Passenger transport specific - -Cancellation by operator* | 3435 | 11401 | 14836 | 16,27% | 11,54% | 12,37% |
| Passenger transport specific - -Check-in baggage and other policies* | 70 | 227 | 297 | 0,33% | 0,23% | 0,25% |
| Passenger transport specific - -Other terms and conditions and unfair commercial practices* | 145 | 607 | 752 | 0,69% | 0,61% | 0,63% |
| Passenger transport specific - -Damaged baggage* | 221 | 660 | 881 | 1,05% | 0,67% | 0,73% |
| Passenger transport specific - -Lack of confirmation (passenger transport)* | 103 | 251 | 354 | 0,49% | 0,25% | 0,30% |
| Passenger transport specific - -Delayed baggage* | 288 | 885 | 1173 | 1,36% | 0,90% | 0,98% |
| Passenger transport specific - -Payment arrangements (passenger transport)* | 198 | 562 | 760 | 0,94% | 0,57% | 0,63% |
| Passenger transport specific - -Denied boarding* | 255 | 912 | 1167 | 1,21% | 0,92% | 0,97% |
| Passenger transport specific - -Passenger not travelling and changes to reservation by the consumer* | 503 | 1694 | 2197 | 2,38% | 1,71% | 1,83% |
| Passenger transport specific - -Lost baggage* | 242 | 899 | 1141 | 1,15% | 0,91% | 0,95% |
| Passenger transport specific - -Additional & ancillary services* | 124 | 498 | 622 | 0,59% | 0,50% | 0,52% |
| Car rental specific* | 7 | 50 | 57 | 0,03% | 0,05% | 0,05% |
| Car rental specific* - -Delay in providing vehicle* | 1 | 7 | 8 | 0,00% | 0,01% | 0,01% |
| Car rental specific* - -Lack of confirmation (car rental)* | 9 | 16 | 25 | 0,04% | 0,02% | 0,02% |
| Car rental specific* - -Other supplementary charges (eg. fuel)* | 108 | 283 | 391 | 0,51% | 0,29% | 0,33% |
| Car rental specific* - -Alleged damage* | 157 | 481 | 638 | 0,74% | 0,49% | 0,53% |
| Car rental specific* - -Lack of pre-contractual information (car hire)* | 8 | 29 | 37 | 0,04% | 0,03% | 0,03% |
| Car rental specific* - -Insurance/cover/waiver* | 50 | 181 | 231 | 0,24% | 0,18% | 0,19% |
| Car rental specific* - -Vehicle condition/other operational problems* | 46 | 69 | 115 | 0,22% | 0,07% | 0,10% |
| Car rental specific* - -Changes to type/group/class of vehicle by trader | 9 | 19 | 28 | 0,04% | 0,02% | 0,02% |
| Car rental specific* - -Other terms&conditions/unfair commercial practices (car rental)* | 65 | 173 | 238 | 0,31% | 0,18% | 0,20% |
| Car rental specific* - -Changes to reservation by consumer* | 20 | 61 | 81 | 0,09% | 0,06% | 0,07% |
| Car rental specific* - -Payment arrangements (car rental)* | 70 | 164 | 234 | 0,33% | 0,17% | 0,20% |
| Car rental specific* - -Cancellation/refusal to provide* | 131 | 236 | 367 | 0,62% | 0,24% | 0,31% |
| Fraud/Scam | 283 | 3104 | 3387 | 1,34% | 3,14% | 2,82% |
| Other* | 501 | 5989 | 6490 | 2,37% | 6,06% | 5,41% |
| None | 81 | 1808 | 1889 | 0,38% | 1,83% | 1,58% |
| Total Unique Issues: | 21117 | 98794 | 119911 | 100,00% | 100,00% | 100,00% |

EU ODR PLATFORM DATA ON THE AVERAGE CLAIM

The average claim disputed by consumers in ADR used throughout this impact assessment is 185€. This figure comes from the EU ODR platform, after removal of outliers (non-credible figures inserted only once by consumers in the form associated to the platform, when filing a complaint).

| Value of complaint | Number of times | Total value |
|--------------------|-----------------|-------------|
| 10 € | 424 | 4.240 € |
| 60 € | 400 | 24.000 € |
| 300 € | 378 | 113.400 € |
| 40 € | 377 | 15.080 € |
| 500 € | 371 | 185.500 € |
| 25 € | 365 | 9.125 € |
| 150 € | 364 | 54.600 € |
| 30 € | 355 | 10.646 € |
| 20 € | 332 | 6.637 € |
| 250 € | 314 | 78.500 € |
| 120 € | 297 | 35.640 € |
| 299 € | 290 | 86.710 € |
| 80 € | 286 | 22.880 € |
| 99 € | 282 | 27.918 € |
| 35 € | 276 | 9.660 € |
| 70 € | 276 | 19.320 € |
| 1.000 € | 271 | 271.000 € |
| 15 € | 267 | 4.005 € |
| 90 € | 264 | 23.760 € |
| 199 € | 262 | 52.138 € |
| 400 € | 261 | 104.400 € |
| 1 € | 250 | 250 € |
| 30 € | 249 | 7.445 € |
| 40 € | 237 | 9.478 € |
| 45 € | 236 | 10.620 € |

| | | |
|-------|-----|-----------|
| 399 € | 236 | 94.164 € |
| 50 € | 228 | 11.398 € |
| 15 € | 227 | 3.403 € |
| 60 € | 216 | 12.958 € |
| 600 € | 204 | 122.400 € |
| 20 € | 196 | 3.900 € |
| 69 € | 191 | 13.179 € |
| 59 € | 189 | 11.151 € |
| 149 € | 188 | 28.012 € |
| 5 € | 187 | 933 € |
| 49 € | 181 | 8.869 € |
| 55 € | 174 | 9.570 € |
| 40 € | 169 | 6.743 € |
| 350 € | 167 | 58.450 € |
| 5 € | 165 | 825 € |
| 499 € | 164 | 81.836 € |
| 39 € | 163 | 6.357 € |
| 119 € | 162 | 19.278 € |
| 25 € | 161 | 4.023 € |
| 110 € | 159 | 17.490 € |
| 180 € | 159 | 28.620 € |
| 29 € | 158 | 4.582 € |
| 129 € | 155 | 19.995 € |
| 159 € | 151 | 24.009 € |
| 249 € | 150 | 37.350 € |
| 70 € | 149 | 10.429 € |
| 89 € | 149 | 13.261 € |

| | | |
|---------|-----|-----------|
| 50 € | 148 | 7.385 € |
| 75 € | 148 | 11.100 € |
| 179 € | 146 | 26.134 € |
| 60 € | 145 | 8.686 € |
| 65 € | 144 | 9.360 € |
| 140 € | 142 | 19.880 € |
| 130 € | 141 | 18.330 € |
| 160 € | 141 | 22.560 € |
| 800 € | 140 | 112.000 € |
| 80 € | 135 | 10.799 € |
| 100 € | 132 | 13.199 € |
| 1.200 € | 130 | 156.000 € |
| 85 € | 129 | 10.965 € |
| 450 € | 127 | 57.150 € |
| 139 € | 126 | 17.514 € |
| 280 € | 124 | 34.720 € |
| 40 € | 122 | 4.874 € |
| 60 € | 122 | 7.314 € |
| 240 € | 122 | 29.280 € |
| 349 € | 121 | 42.229 € |
| 1.500 € | 120 | 180.000 € |
| 36 € | 119 | 4.284 € |
| 700 € | 119 | 83.300 € |
| 2.000 € | 119 | 238.000 € |
| 79 € | 116 | 9.164 € |
| 35 € | 115 | 4.024 € |
| 699 € | 114 | 79.686 € |

| | | |
|-------|-----|----------|
| 12 € | 113 | 1.356 € |
| 30 € | 113 | 3.384 € |
| 24 € | 112 | 2.688 € |
| 229 € | 112 | 25.648 € |
| 32 € | 110 | 3.520 € |
| 279 € | 110 | 30.690 € |
| 10 € | 107 | 1.059 € |
| 48 € | 107 | 5.136 € |
| 189 € | 107 | 20.223 € |
| 170 € | 106 | 18.020 € |
| 219 € | 105 | 22.995 € |
| 599 € | 105 | 62.895 € |
| 13 € | 104 | 1.352 € |
| 95 € | 104 | 9.880 € |
| 169 € | 104 | 17.576 € |
| 45 € | 103 | 4.634 € |
| 37 € | 102 | 3.774 € |
| 125 € | 101 | 12.625 € |

The total value of EUR 3,305,528 divided by 17,914 times gives a result of EUR 184.5 per dispute.

SWEEP ON PODR

In order to gather data on the quality standards of PODR systems provided by online intermediaries, a screening of nine major online platforms operating within the EU was conducted to evaluate their compliance with the requirements set forth in the ADR Directive. This

screening was based on a structured checklist, which consisted of twelve questions designed to assess the quality standards of PODR systems offered by these intermediaries.

Each question was graded based on a hypothetically compliant or non-compliant answer, with a score of 1 or 0, respectively. In the event that the information was not found or available, a score of 0.5 was assigned, unless the provision of such information was a requirement, in which case the score would be 0. The sum of each score expressed in percentage comprised the total score of compliance. The questions were the following:

1. Does the platform clearly provide its dispute resolution rules?
2. Is there a clause on applicable law?
3. Are the persons in charge of dispute resolution impartial?
4. Are there time limits on when the claim can be submitted after purchase?
5. Can a consumer submit the complaint in a language of their choice (or at least the country where they reside)?
6. Is there any guarantee that the persons in charge of dispute resolution are trained in the consumer law?
7. Can parties submit their evidence/expert opinions?
8. Do consumers have access to the trader's position/evidence?
9. Is the dispute resolution free of charge?
10. Is there any commitment to resolve disputes within a certain period of time?
11. Can the consumer be represented?
12. Is it clear how the outcome is enforced?

The results of the screening showed a level of perceived compliance ranging from 42% to 88%, with an average of 67%, as seen in the following table. However, to meet the quality standards ADR Directive, these platforms should have scored a total of 100%.²⁰³ This highlights the fact that while millions of consumers rely on digital platforms' PODRs, these systems do not meet the quality standards that consumers would expect from an out-of-court dispute resolution mechanism, and which the ADR Directives affords to them in the context of ADR.

²⁰³ Note that the compliance is perceived, i.e. the indicators are based on what the consumer can find about the quality criteria on the websites of the platform, rather than an actual indication of compliance.

| PODR | Score | Compliance (score/12) |
|--------|-------|--------------------------|
| PODR 1 | 8 | 67% |
| PODR 2 | 8.5 | 71% |
| PODR 3 | 8 | 67% |
| PODR 4 | 8 | 67% |
| PODR 5 | 6 | 50% |
| PODR 6 | 8,75 | 73% |
| PODR 7 | 10,5 | 88% |
| PODR 8 | 9,5 | 79% |
| PODR 9 | 5 | 42% |

ANNEX 5: COMPETITIVENESS CHECK

1. Overview of impacts on competitiveness

| Dimensions of competitiveness | Impact of the initiative (++ / + / 0 / - / -- / n.a.) | References to sub-sections of the main report or annexes |
|--------------------------------|--|--|
| Cost and price competitiveness | ++ | Chapter 6 - Impacts of the policy options, Annex 4. |
| Capacity to innovate | + | Chapter 6 - Impacts of the policy options, Annex 4. |
| International competitiveness | ++ | Chapter 6 - Impacts of the policy options, Annex 4. |
| SME competitiveness | ++ | Chapter 6 - Impacts of the policy options, Annex 4. |

2. Synthetic assessment

The impacts on the cost and price competitiveness under the preferred option are expected to be positive (high magnitude), due to savings from compliance costs. Replacing the need of disclosing information on ADR with the duty to reply would yield for businesses a total benefit of EUR 3.3 billion in 10 years, allowing them to improve their cost and price competitiveness. Also, newly established businesses in the EU in the next 10 years would not incur into costs to provide ODR information on their website, but this estimate is already included in the calculations linked to the removal of ADR information, presented above.

The same would apply for international competitiveness of EU traders, also considering that the provision on the extension of the scope to third-country traders would level the playing field in favour of EU traders, correcting a market failure.

Considering the capacity to innovate, it is expected that the initiative would be positive of limited magnitude, because a re-established level playing field would encourage the development of new ideas in order for businesses in the same sector to be more competitive with each other.

SMEs, which in principle are not likely to fall under the scope of the initiative would indirectly benefit strongly from the initiative, as ensuring a level-playing field would have positive effects of high magnitude on their capacity to conduct a business.

ANNEX 6: PERFORMANCE OF THE ODR PLATFORM

INTRODUCTION

The ODR Regulation, adopted in 2013 to complement the ADR Directive, established the European Online Dispute Resolution Platform (“ODR platform”) to facilitate access to ADR for disputes stemming from online purchases. Its Implementing Regulation²⁰⁴ established the technical modalities for the functioning of the platform and the network of the ODR contact points.

The ODR platform, open to public since February 2016, is a voluntary matchmaking tool, where consumers who have problems with online purchases, can request the trader to refer the dispute to an ADR entity. It applies to both national and cross-border disputes (slightly more than half of the disputes are cross-border) and is available in all EU languages, plus Norwegian and Icelandic. The Commission has no role in dispute resolution, and may only access the database of cases for technical and monitoring purposes.

The ODR platform’s website is one of the most visited sites of the European Commission (2,5 million visits in 2022)²⁰⁵. Even if less than one percent of the visitors actually use the complaint form, the platform, however, amassed 180 thousand²⁰⁶ complaints since its launch in 2016, with additional 87 thousand requests for traders to settle directly (not involving ADR).²⁰⁷ 80-85% of complaints, however, go unanswered on the platform, with only about of 1% of the complaints (i.e. about 150 cases) resulting in an ADR outcome.²⁰⁸ This low success rate has persisted over the years, regardless of the technical and design improvements on the platform, or information campaigns.²⁰⁹

| Year | Website visits | Direct talks** | Complaints | Complaints referred to ADR | ADR outcomes |
|-------|----------------|----------------|------------|----------------------------|--------------|
| 2016* | 1.715.794 | - | 20.176 | 406 | 112 |
| 2017* | 2.743.509 | - | 32.559 | 597 | 249 |
| 2018* | 5.246.777 | - | 44.979 | 860 | 396 |
| 2019* | 2.765.583 | 5.970 | 31.694 | 598 | 294 |

²⁰⁴ Commission Implementing Regulation (EU) 2015/1051 of 1 July 2015 on the modalities for the exercise of the functions of the online dispute resolution platform, on the modalities of the electronic complaint form and on the modalities of the cooperation between contact points provided for in Regulation (EU) No 524/2013 of the European Parliament and of the Council on online dispute resolution for consumer disputes

²⁰⁵ This number remains relatively stable throughout the years, with an increase to 3 million visitors in 2020, during the COVID lockdown, and an anomalous increase in 2018 to 5 million, following a social media campaign, where half of the visits were recorded during one month of the campaign

²⁰⁶ The tables in this Annex refer to the data up to end 2022 only (177 thousand complaints, 80 thousand direct talks)

²⁰⁷ The “direct talk” functionality has been introduced following the low rate of transfers to ADR and the survey data that shows that more disputes are settled bilaterally outside of the platform, following the initial complaint. The direct talk is essentially a draft of the complaint that the consumer shares with the trader before finalising and requesting that the trader uses ADR.

²⁰⁸ The remaining 19-24% complaints were either closed because either consumer or trader withdrew, indicating a possible settlement, or ADR entity rejected or was unable to resolve the complaint.

²⁰⁹ The rate for the direct talks was similarly low, where about 1% of cases are closed on the platform with “successful settlement”.

| | | | | | |
|------------------------|-------------------|---------------|----------------|--------------|--------------|
| 2020* | 3.315.599 | 30.319 | 17.461 | 429 | 163 |
| 2021 | 2.616.235 | 21.946 | 13.246 | 400 | 169 |
| 2022 | 2.455.677 | 28.111 | 17.012 | 318 | 107 |
| Total 2016-2022 | 20.859.174 | 80.244 | 177.127 | 3.608 | 1.490 |

* Years where UK consumers, traders and ADR entities were still using the platform. While Brexit affected the number of submissions, it did not have a noticeable change on the proportion of complaints reaching ADR.

** Direct talks (consumers and traders exchanging messages on the platform directly, without involving ADR) were offered as of July 2019. More details are available later in this Annex.

This annex provides statistical data and looks at the reasons behind the persistently low success of the platform, with regards to the regulatory choices of the ODR Regulation, platform design and the context of the modern digital markets in the EU/EEA.

THE ODR REGULATION

The sole purpose of the ODR Regulation is to provide a legal basis for the ODR platform:

- (1) The Commission is responsible for the development and operation of the ODR platform, including all the translation functions necessary for the purpose of this Regulation, its maintenance, funding and data security. The Commission also publishes reports and statistical information and organises the meetings of the National Contact Points;
- (2) The Member States are responsible for establishing and maintaining the national ODR contact points with two national ODR advisers (which, to Member State's discretion, may be delegated to an ECC, consumer association or any other body). The role of the contact points is to help the users with the platform, as well as provide some general advice;
- (3) The ADR entities are obliged to process the disputes arriving via the platform, if the trader and consumer agreed to refer the dispute to a particular ADR entity.²¹⁰
- (4) The traders selling online are obliged to provide an easily accessible link to the ODR platform on their websites, along with an email address for the contact. Online marketplaces only need to provide an easily accessible link. These obligations apply irrespective of whether the trader is obliged or committed to use ADR and does not mean that the trader consents to use ODR.²¹¹

In practice, the ODR platform ecosystem also permits to manage some of the obligations in the ADR Directive:

²¹⁰ See Article 10(d) ODR Regulation – the ADR entities, however, are not obliged to use the platform's case handling tool apart from communication the decision on admissibility and, if applicable, on the outcome of the dispute.

²¹¹ Some traders formally comply with the link obligation, but not the email obligation, or warn consumers that they will not respond to complaints coming from the ODR platform.

- (1) Notification of the national ADR entities to the Commission and publishing by the Commission of respective multilingual lists, including contact details, information on procedure and fees (Article 20(4) of the ADR Directive);²¹²
- (2) Assistance for consumers who need access to an ADR entity operating in another Member State (Article 14 ADR Directive) is, in practice, performed mostly by the ODR national contact points as they in any case have to advise consumers on ADR.

However, while the ADR directive empowers consumers to submit a complaint to an ADR entity²¹³, the ODR Regulation's approach is that a consumer's complaint only reaches the ADR stage if, and only if, the trader explicitly agrees and proposes an ADR body²¹⁴. In the absence of such an agreement, the platform automatically closes the case in 30 days after submission of the complaint by the consumer. Therefore:

- (1) Only 2% of traders agree to use an ADR when asked through the platform;
- (2) Use of the ODR platform thus creates an unnecessary additional step for consumers compared to them submitting a complaint to the ADR entity directly, with consumers losing time;²¹⁵
- (3) The complaint can only reach the trader if the consumer uses the proper contact email that traders are to provide for the purpose of reply to the ODR platform emails. However, traders' compliance with the obligation to signpost the link and the e-mail has been below 30%²¹⁶. This means that the platform effectively cannot be used when the consumer does not know how the email of the trader behind the website.²¹⁷
- (4) The use of the ODR platform is voluntary even when the trader is committed or obliged to use ADR. Indeed, while 4 to 9% (depending on the year) of consumers indicated in the complaint form that, to their knowledge, the trader was obliged or committed to use ADR, the actual rate of transfer to an ADR was significantly lower (2% for most years, and the maximum of 4% for 2018).

When the trader refuses explicitly to use ADR (which happens in only about 10% of the cases), about half of the traders do so because they are still looking for a solution bilaterally, over a quarter report they already found a solution, and one in five (or 2% all complaints submitted on the

²¹² The Implementing Regulation provided for an electronic notification form, which allows Member States to notify the ADR entities to the platform directly. Once the ADR entities nominate at least one user for the purposes of handling complaints arriving via the platform, and the Commission makes the necessary translations, the entities are added to the list semi-automatically.

²¹³ See, for example, recitals 24-25, or Article 1 of the ADR Directive.

²¹⁴ Article 9(3) of the ODR Regulation. While the trader should, in principle, decide whether to propose ADR or not within 10 days, there are no consequences for failure to do so, as the process is voluntary.

²¹⁵ Especially if the trader is not aware which ADR they should use, and ADR subsequently rejects the case.

²¹⁶ Webscraping exercise and sweep on telecommunications and digital services, both 2018.

²¹⁷ The consumers themselves may make errors, i.e. write the wrong email address, which may mean that the complaint would not even make it to the right department within 30 days.

platform) state they are not interested in ADR. Most traders however remain completely silent and cases are closed automatically.

- (5) Automatic closure of the complaint is a constant source of frustration for the consumers who come to the platform²¹⁸. Indeed, most contact points report that 30 days closure has remained the most frequent cause for consumers to contact them, and even if the voluntary nature of the platform is well explained and the consumers are notified of the other means of redress, the consumers do not understand why their case was simply closed without information from the trader or an ADR body.

ODR PLATFORM AS DIGITAL SERVICE INFRASTRUCTURE

The ODR Regulation mandates the platform to be user-friendly, multilingual and compliant with the Commission's stringent security, data protection and accessibility requirements. It should work on a broad range of browsers and mobile devices (there is currently no app version).

The ODR platform was built in 2015, using technology recommended for similar-sized Commission websites then, using the ColdFusion programming language. However, the technology is now considered obsolete in the Commission. Throughout the years, the platform was redesigned several times, however, each redesign met with technical difficulties and both the Commission and national contact points have received numerous complaints from the users, consumers and traders alike.

The Commission's efforts to improve the platform are based on the feedback of the users, the national contact points²¹⁹, and other stakeholders:

- 2017-2018 – redesign in line with the Commission corporate guidelines, streamlining the complaint process, rewriting notifications in a clear and specific language, taking measures against the notifications being classified as spam;
- 2019 – introducing the self-test tool for consumers to find the best redress option for their problems (including, but not limited to, the ODR platform), creating a space for consumers and traders to connect on the platform before referring the dispute to ADR (and not being limited by 30 days), specific information for the traders;
- 2019-2020 – improvements for the national contact points, functional analysis to re-evaluate the ODR platform's minimum requirements under the ODR regulation to simplify the process, study of new functions in order to maximise consumer empowerment;

²¹⁸ As confirmed by the results of the platform exit survey, the reports of the national contact points, and different research activities performed in the framework of the platform management

²¹⁹ Bi-yearly reports of the national contact points and twice-yearly meetings under the ODR Regulation, and ad hoc communications

- 2020-2021 – design thinking action to create user-friendly interfaces to be deployed on the next iteration of the ODR platform. Behavioural experiment monitoring traders’ response to different treatments informed by the behavioural science.

However, as seen before, these improvements were not able to turn the tide when it comes to the objective of the ODR Regulation – the rate of complaints reaching ADR remained around 2% of submissions and 0,02% of visits.

A number of issues with the ODR platform persist regardless of the improvements:

- The outdated technical solution means that the platform is often slow to respond, especially when the users’ internet connection is not strong;
- The helpdesk path is very complex for the user: consumers and traders must turn to the national contact points who often have to escalate to the technical helpdesk, which due to the regulatory confidentiality requirements have very limited access to complaints and direct talks on the platform;
- The structure of the ODR platform does not always fit well with the traders’ structure, who may have different branches in different countries;
- The design of the platform is perceived as complex and not user-friendly. The national contact points reported that the users have difficulties finding information even when it is, in the view of the contact points familiar with the platform, stated clearly and prominently.

Some of these issues could have been addressed with the comprehensive overhaul of the ODR platform.²²⁰ However, this would entail additional investment upward 1 MEUR²²¹, while maintenance of the ODR platform is already costing more than 0,5 MEUR per year just for technical maintenance, not counting the staff of the Commission or translation costs. Given that neither information campaigns nor design improvements had a significant and durable impact on the traders’ engagement with ADR, the likelihood of a positive change with a revamp only is very low.

THE VALUE OF THE ODR PLATFORM

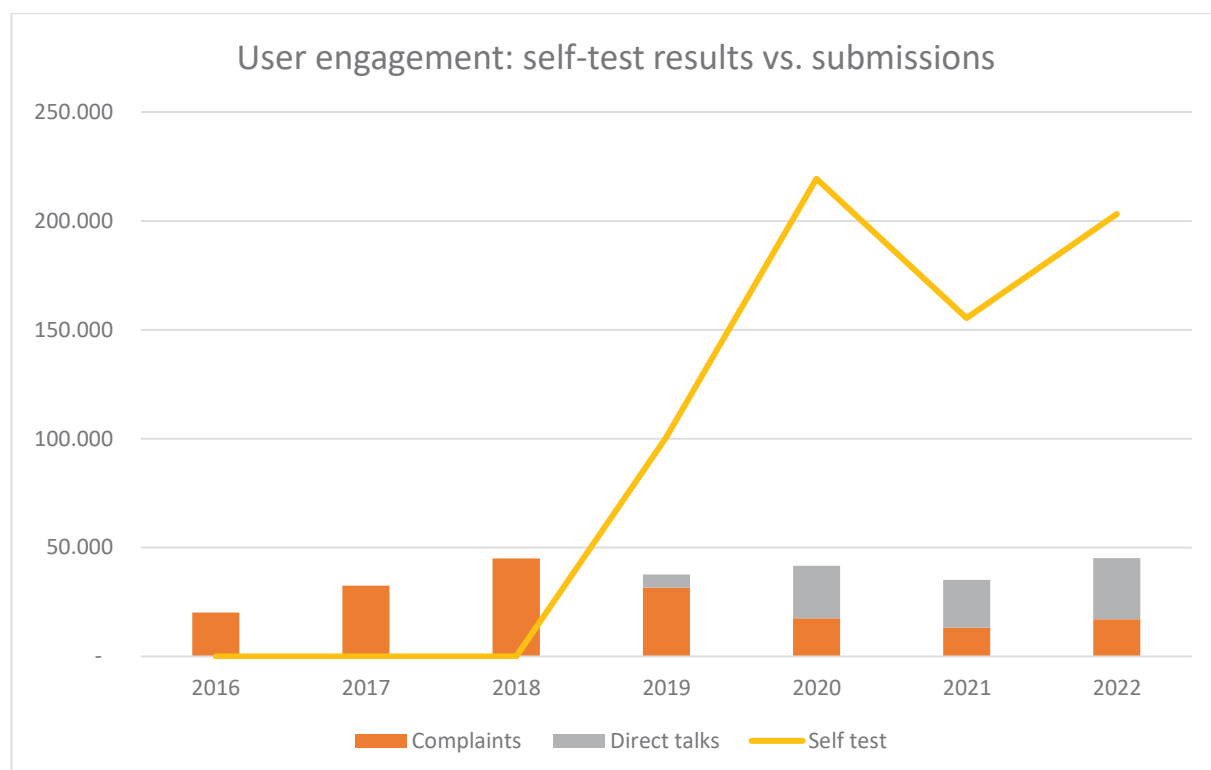
Consumers land on the ODR platform because they have a problem which is likely to have been already dismissed by the trader²²². The ODR platform, aside from its complaint function, is also an information hub where the consumer learns about their rights and redress options, can access the contact points and ADR entities. In this way, the existence of the platform had value beyond the ODR Regulation. However, and with a minimal cost, this value could have been achieved by a simple website offering information, signposting tools and access to a national advisor.

²²⁰ In 2021, DG JUST submitted a Project Initiation Request for the revamped ODR platform to the Information Technology and Cybersecurity Board. The request included externalisation of the platform technical management and was rejected by ITCB as, in ITCB view, there was not enough evidence to support externalisation.

²²¹ Estimated by DG JUST in 2021 prices

²²² See earlier footnote: 95% consumers already contacted the trader before they submit their case to the ODR platform

The self-test tool has been one of the most successful and appreciated improvements: it drastically²²³ increased the level of engagement with the platform, and assisted consumers to understand whether their case was in the scope of the platform and about the other means to resolve their disputes (going to the ADR directly, contacting the trader first, approaching an ECC).



* complaints involving UK consumers and traders (up to 2020) are excluded for comparison purposes.

As shown in the chart, the self-test and the opportunity to have direct talks significantly reduced the amount of “traditional” complaints on the platform as such complaints would involve a higher burden for consumers (filling in the form, waiting 30 days for a reply) when it was not certain that the trader would agree to use ADR. On the other hand, the share of the consumers who submitted a complaint without trying to contact the trader first decreased from 11% in 2016-2018 to 5% in 2020-2022. The Commission is now conducting a behavioural study on the use of an AI-powered chatbot that would build on the initial success of the self-test tool, allowing consumers to better understand their rights and redress options.

The direct talk module has been less successful though, with only 1% of those having used it coming back to the platform to record that a settlement was reached.

²²³ i.e. in 2020 and 2022 there were five times more users that completed the self-test, compared to those who submitted a complaint.

Consumers and traders are invited to fill in an “exit survey” after the case had been closed on the platform.²²⁴ According to this Survey, 20% of consumers who posted a complaint got their case resolved. Most of them report that the solution was found directly with the trader which contacted them directly instead of using the platform. Further 20% of consumers were have been contacted by the trader outside the platform, however, they do not consider that their case was resolved.

19 thousand traders, including large platforms and small companies, are currently registered on the ODR platform.²²⁵ It appears that many of them are willing to settle – either immediately or after ADR is requested through the platform – but not using the ODR platform and thus not going to an ADR process. This indicates that most of the issues are not considered needing an ADR by traders. However, because of the moral pressure created by the use of an official EU level platform, they are ready to make an effort and consider again the consumer request.

Traders’ unwillingness to use an ADR process is unlikely to be modified by information campaigns²²⁶, technical or design improvements as it is the process itself that they reject and in fact, in all other situations the process is that it is the ADR body that contacts the trader, as a neutral 3rd party; following a complaint that the ADR received.

The developments in digital markets also explains why the platform is unsuccessful:

- The ODR Regulation, adopted in 2013, did not take into account or predict the evolution of the digital markets and dominance of platforms, many of which offer their own, private, dispute resolution systems;
- Similarly, it was impossible to predict that the traders’ engagement in ADR will take time to build. If the traders are unlikely to use ADR, signposting a link to the ODR platform and maintaining email address creates additional burden for the trader and false expectations for the consumer;
- The ODR platform is a confidential environment. This means that ODR data would be separated from the other data the trader has on their customers (unless the trader manually exports it or invests in an interoperable solution). This, on its own, is counter-productive for the online traders given the importance of data quality in the modern digital markets.

On the other hand, the consumers’ satisfaction with the platform, given its current premise, rests mostly on whether it delivered on having a dispute resolved. Even those consumers who find the ODR platform easy to use and informative, are unlikely to return if the main function of the platform is not fulfilled.

| Would you use the site again for another dispute? | My dispute was resolved | My dispute was not resolved |
|--|--------------------------------|------------------------------------|
| Yes | 74% | 10% |

²²⁴ Where the traders’ survey has a very low rate of reply (only 60 from 2019 to date), the consumers’ survey amassed 20485 responses (roughly 1/6 complaints).

²²⁵ Due to the security/privacy considerations, the traders do not receive case data by email, only notifications. If a trader wants to see the details of a case, they need to register on the ODR platform.

²²⁶ In 2018, the Commission carried out a specific campaign for the traders. This led to a temporary increase in registrations, but did not produce a durable effect

| | | |
|--------------|-----|-----|
| No | 11% | 56% |
| I don't know | 15% | 33% |

Source: exit survey of the ODR platform.

CONCLUSION

The ODR Regulation and the ODR platform has served a purpose by providing a space for consumers to learn about their rights and redress options. However, its main function, to transfer the complaints to the ADR entities, has been unsuccessful, with less than 200 outcomes (or 1% of the submissions per year). The dispute resolution module, which is responsible for the majority of the costs associated with the ADR platform, has not delivered. It would therefore be opportune to retain and enhance the successful features of the ODR platform, such as access to the ADR entities and national advisor, and automatic assistance on consumer redress, in lieu of the further investment in maintaining the dispute resolution/ADR transfer components and obliging all online traders to maintain a link to a platform they do not want to use and to maintain and regularly check an email address for this purpose.



EUROPEAN
COMMISSION

Brussels, 17.10.2023
SWD(2023) 335 final

PART 2/2

COMMISSION STAFF WORKING DOCUMENT

IMPACT ASSESSMENT REPORT

Accompanying the document

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 final} - {SEC(2023) 347 final} - {SWD(2023) 334 final} -
{SWD(2023) 337 final}

TABLE OF CONTENT

| | |
|--|-----|
| GLOSSARY..... | 2 |
| 1. Context..... | 3 |
| 1.1. General Introduction | 3 |
| 1.2. Purpose and Scope of the Evaluation..... | 4 |
| 2. WHAT WAS THE EXPECTED OUTCOME OF THE INTERVENTION? | 4 |
| 2.1. Background to the ADR Directive | 4 |
| 2.2. ADR Directive Intervention Logic..... | 5 |
| 2.3. Baseline and Points of Comparison | 7 |
| 2.4. State of Play on the Implementation of the ADR Directive across the EU..... | 9 |
| 3. HOW HAS THE SITUATION EVOLVED OVER THE EVALUATION PERIOD? | 9 |
| 4. EVALUATION FINDINGS | 14 |
| 4.1. Effectiveness | 14 |
| 4.2. Efficiency..... | 18 |
| 4.3. Coherence..... | 24 |
| 4.4. Relevance..... | 27 |
| 4.5. EU added value | 32 |
| 5. WHAT ARE THE CONCLUSIONS AND LESSONS LEARNED? | 36 |
| 5.1. Six main lessons from the evaluation of the ADR legislation | 36 |
| 5.2. Conclusion | 36 |
| ANNEX I: PROCEDURAL INFORMATION..... | 38 |
| ANNEX II: METHODS AND ANALYTICAL MODELS..... | 39 |
| ANNEX III: QUESTIONS MATRIX FOR THE ADR DATA COLLECTION STUDY | 67 |
| ANNEX IV.A: AMENDMENTS TO THE NATIONAL LEGAL FRAMEWORKS IMPLEMENTING THE ADR DIRECTIVE | 87 |
| ANNEX IV.B: STATISTICS ON ADR DISPUTES (2018-2021) | 90 |
| ANNEX IV.C: NATIONAL MONITORING SCHEMES | 104 |
| ANNEX IV.D: LIST OF ADR GRANT AWARDEES | 112 |
| ANNEX V: OVERVIEW OF COSTS AND BENEFITS | 118 |

GLOSSARY

| Acronym | Definition |
|---------|---|
| ADR | Alternative Dispute Resolution |
| AI | Artificial Intelligence |
| B2B | Business to Business |
| C2B | Consumer to Business |
| C2C | Consumer to Consumer |
| CJEU | Court of Justice of the European Union |
| CPC | Consumer Protection Cooperation |
| DSA | Digital Services Act |
| EEA | European Economic Area |
| ECC-Net | European Consumer Centres Network |
| FIN-Net | Network of Financial ADR entities |
| MS | Member State(s) |
| NEB | National Enforcement Body |
| ODR | Online Dispute Resolution |
| RAD | Representative Actions Directive |
| SME | Small and Medium Enterprises |
| TFEU | Treaty on the Functioning of the European Union |

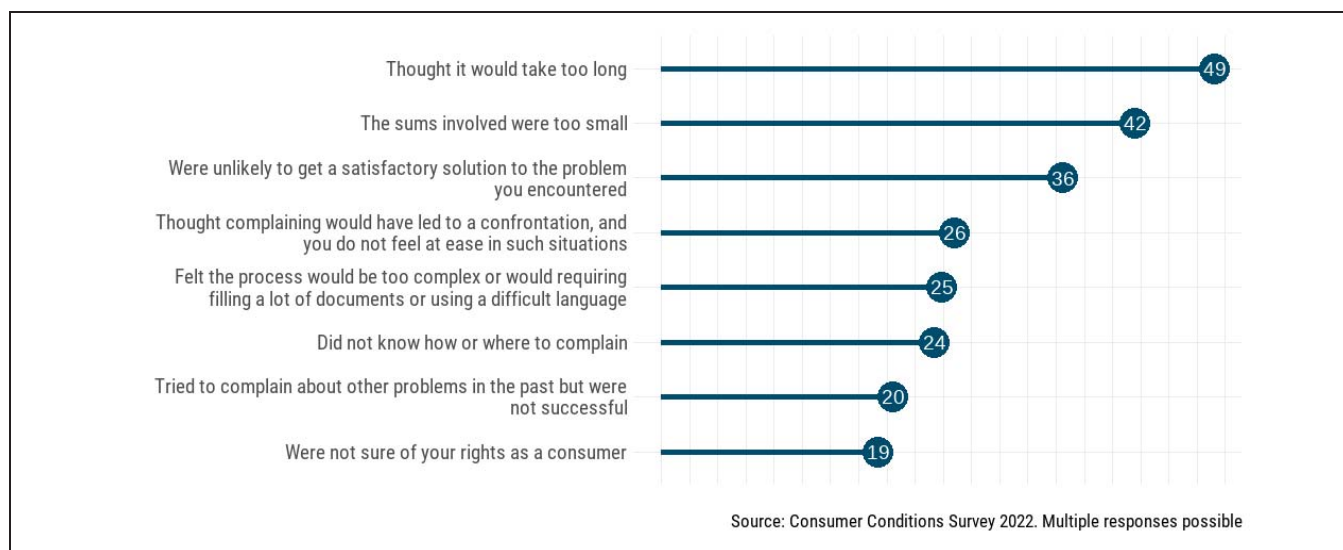
ANNEX 7 EVALUATION

1. Context

Consumer expenditure in the EU generates more than half of the EU GDP. Overall, consumer transactions take place smoothly in the EU thanks to the extensive body of consumer protection laws. Consumer requests are mostly resolved by a talk with traders thanks to sound after-sales mechanisms.

However, there is a significant share of EU consumers who are not complaining because they do not trust their problems will be solved in an efficient and/or rapid manner. Data from the 2022 Consumer Conditions Survey indeed shows that 25% of consumers encountered a problem when buying goods or services from a trader in their own country in the last 12 months, for which they felt there was legitimate reason to complain but almost half (12% of all consumers) took no further action. Among those, 49% felt it would take too long, 42% considered the sums involved were too small and 36% felt it was unlikely to get a satisfactory solution (see graph below).

REASONS WHY CONSUMERS ENCOUNTERING PROBLEMS DID NOT COMPLAIN (%)



In this respect, the EU out-of-court dispute resolution legal framework established in 2013 aims at helping EU consumers and traders resolve domestic and cross-border disputes in a fair, transparent, affordable and fast way. The rationale for an EU intervention in the domain was to encourage and empower consumers to take action to resolve disputes when they do not manage to reach an amicable solution with traders. Respecting quality criteria in out-of-court dispute resolution was indeed considered key to ensure equal access to consumer redress across the EU and a higher level of trust in such schemes. Although ADR is not meant to replace court litigation, it is an effective redress mechanism to resolve low-value disputes, as resorting to court is more costly and often much more time-consuming.

1.1. General Introduction

The Alternative Dispute Resolution (ADR) Directive¹ was adopted in 2013 **with a minimum harmonisation approach, to cater for the different ADR cultures and national frameworks that existed across the different EU Member States.** It reflects the no one-size-fits-all method adopted by the EU for enforcement matters which are mainly the responsibility of Member States. The objective was to propose a set of harmonised quality requirements to ensure that ADR schemes are fair, independent and impartial whatever the model, including where ADR schemes are financed by industry/trade associations.

¹ Directive 2013/11/EU of the European Parliament and of the Council on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR), OJ L 165, 18.6.2013, p. 63.

Member States are required to ensure that all EU consumers can benefit from out-of-court dispute resolution across all economic retail sectors for free or at an affordable fee.

The parallel adoption of the Online Dispute Resolution (ODR) Regulation² enabled the Commission to design and manage the ODR Platform which is a single multi-lingual point of entry to put consumers seeking to resolve disputes out-of-court in contact with the trader. The Commission lists the quality ADR entities notified by the ADR Competent Authorities on the Platform to ensure clear information and easier access to consumers.

The 2019 Commission ADR/ODR Application Report³ concluded that all Member States registered progress in their ADR landscape thanks to the ADR Directive although the overall uptake of ADR, especially to resolve cross-border disputes, remained low. The main issues flagged were:

- consumers may not be sufficiently aware and informed of the applicability of consumer protection rules and of the existence of cross-border means of redress;
- traders are not always keen to engage in ADR;
- other practical challenges e.g. costs, language barriers, no clarity on the applicable law to be used in a cross-border context, lack of easily accessible online procedures.

1.2. Purpose and Scope of the Evaluation

This evaluation of the ADR Directive is being carried out in line with the Better Regulation Guidelines and Toolbox. It assesses the 5 main evaluation criteria (efficiency, effectiveness, relevance, coherence, EU added value), highlighting how ADR has been applied on the ground, as well as at the challenges and shortcomings in the implementation of ADR at national and cross-border levels across all the EEA countries. It is based on the outcome of consultations and studies carried out over the last 2 years⁴, providing extensive quantitative and qualitative data from 2018-2021, as well as lessons learnt from the ADR Directive implementation. The 2019 Commission ADR/ODR application report focused on the period between the entry into application of the ADR Directive in 2015 until 2018.

Article 26 of the ADR Directive obliges the Commission to report every 4 years to the European Parliament, the Council and the European Economic and Social Committee on the application of this Directive on the development and use of ADR entities and the impact of the ADR Directive on consumers and traders, in particular on the awareness of consumers and the level of adoption by traders. That report shall be accompanied, where appropriate, by legislative proposals for amendment of the ADR Directive. This evaluation is to complement the application report and is necessary to support the Commission's proposal to review the ADR Directive. This is why, in 2022, the Commission launched on the "Have your Say" website two public consultations: i.e. backward-looking approach⁵ and forward-looking approach and a Call for Evidence⁶ to highlight possible policy options should the need arise to revise the ADR Directive.

An external data collection study⁷ was also carried out in 2022 by a contractor to support the Commission's above-mentioned work, following a call for services under a framework contract.

2. WHAT WAS THE EXPECTED OUTCOME OF THE INTERVENTION?

² Regulation (EU) No 524/2013 of the European Parliament and of the Council on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Regulation on consumer ODR), OJ L 165, 18.6.2013, p. 1.

³ COM/2019/425 final, 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; <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2019:425:FIN>

⁴ For an overview of all consultation actions and desk-based review, please consult the Stakeholder Annex to the Impact Assessment.

⁵ Available in all EU languages between 4 April and 27 June 2022; https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13417-Resolving-consumer-disputes-out-of-court-report_en.

⁶ Available in all EU languages between 28 September and 21 December 2022; https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13536-Consumer-rights-adapting-out-of-court-dispute-resolution-to-digital-markets_en

⁷ <https://data.europa.eu/doi/10.2838/15448>

2.1. Background to the ADR Directive

The current ADR Directive aims to ensure EU consumers have access to high-quality ADR to resolve their contractual disputes arising from the sale of goods or services. To benefit from the ADR system, consumers need to reside in the EU and the traders need to have their statutory seat, central administration or place of business in the EU. The Directive covers both domestic and cross-border consumer-to-business (C2B) disputes throughout the EU. Member States are to establish all the aspects of their national ADR framework, including its governance and the model that ADR entities must follow.

ADR entities may be public or private independent bodies or closely connected to traders and trade associations, and they may have sectoral or general competence in terms of market sectors. Some Member States also provide geographical competence i.e. at regional level (e.g. ES and HU) or a residual system i.e. a centralised ADR scheme resolving a wide range of disputes or covering all disputes not covered by the other ADR bodies (e.g. EE, LV, LT, SK) to ensure there are no gaps in access to ADR.

The procedures vary from consumer arbitration⁸ to mediation⁹ or ombudsman schemes to reach mediated or arbitrated settlements with traders, delivering binding or non-binding outcomes.¹⁰ Direct negotiation between the consumer and the trader (amicable settlement) is excluded, as well as internal complaint handling procedures operated by the trader. Judicial settlements fall outside of the scope of the Directive. In most countries, ADR proceedings are voluntary for traders although many Member States adopted sector-specific provisions that make trader participation mandatory.

To qualify as quality ADR entity, the entity has to comply with all the quality requirements outlined under Chapter II of the ADR Directive (expertise, independence, impartiality, transparency, effectiveness, fairness, liberty, legality). Member States have to set up one or several competent authorities¹¹ that should accredit and monitor the compliance of ADR bodies with the quality requirements and notify them to the Commission.

The Directive was built on the European Commission Recommendations 98/257/EC¹² and 2001/310/EC¹³.

2.2. ADR Directive Intervention Logic

The below intervention logic summarises how the EU action was originally expected to work at the time of adoption of the ADR Directive (in 2013):

⁸ In arbitration, the third party listens to both sides, assesses what the outcome of the dispute should be and proposes a solution based on the assessment.

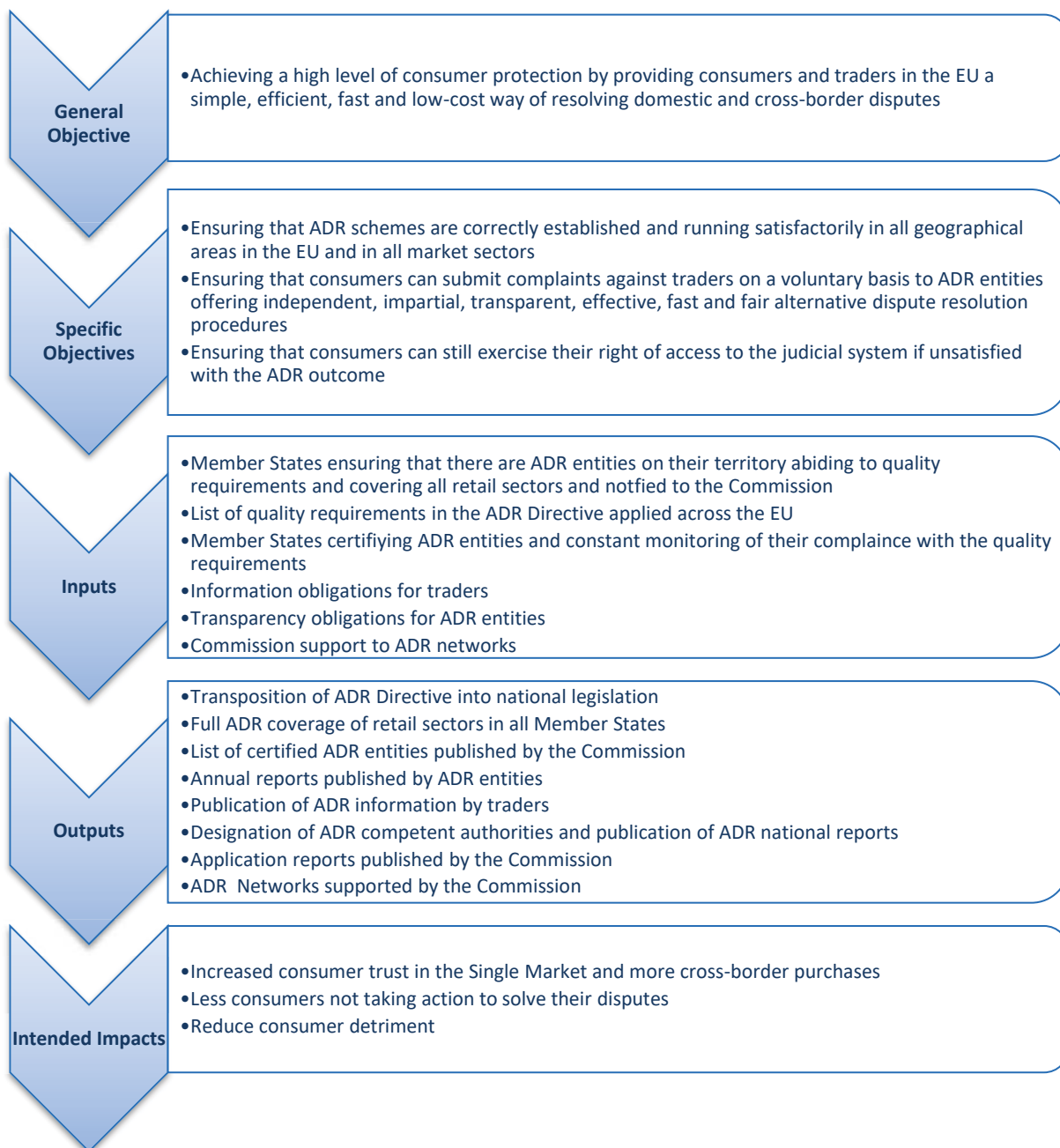
⁹ In mediation, the ADR entity clarifies the facts of a dispute, establishes the views of the parties and helps them agree on a solution acceptable to both parties.

¹⁰ According to the Swedish Consumer Agency, more consumers would turn to ADR if they are guaranteed a qualified legal assessment in the form of a recommendation rather than mediation.

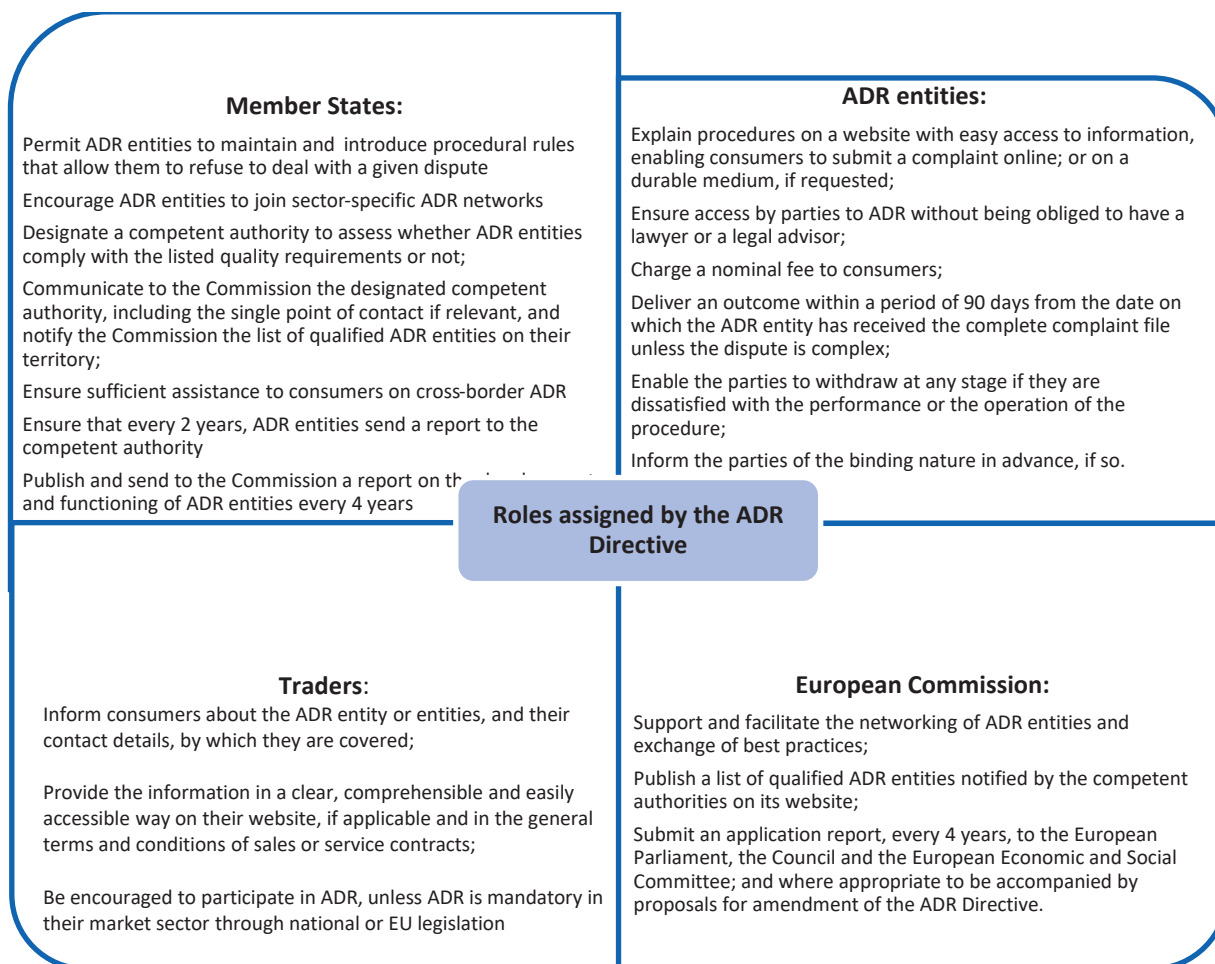
¹¹ The following MS notified more than one ADR Competent Authority: AT, DE, ES, IT, NL.

¹² Commission Recommendation 98/257/EC of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes.

¹³ Commission Recommendation 2001/310/EC of 4 April 2001 on the principles for out-of-court bodies involved in the consensual resolution of consumer disputes.



Considering the minimum harmonisation approach, the aim of the Directive was not to be prescriptive, but principle based. It assigned the following roles to the various parties which should be considered as the EU level **input into the system**:



These inputs in turn lead to **outputs** consisting in the transposition, the practical application and enforcement of the Directive. These outputs are directly observable.

The overall expected output is access to quality ADR schemes across the EU providing assurance that ADR entities are up to the required quality standards and subject to assessment and monitoring of ADR competent authorities. The structural aspect of this output was already confirmed by the 2019 Commission report: all Member States had designated competent authorities and put in place accreditation and monitoring procedures and the required sectoral coverage was achieved. The Commission, received over the last eight years a very small number of complaints from consumers flagging gaps in the system e.g. scepticism on the non-impartiality of some ADR entities, delays in providing a final result, traders not complying with the ADR outcome. The limited number of questions permit to conclude that the Directive delivered its desired quantitative output.

However, this output is not sufficient to conclude that the overall objective of a swift and affordable handling of low-value consumer disputes in all markets is achieved, especially in respect to digital markets, which are continuously gaining market share and where consumer disputes are becoming more complex (e.g. involving an intermediary providing a service on a marketplace, involving non-EU traders or hidden marketing techniques and dark patterns) as extensively described in the driver section of the Impact Assessment to which this evaluation is annexed.

2.3. Baseline and Points of Comparison

During the preparatory work of the ADR Directive in 2010-2012, digital markets were not so complex, online shopping had not picked up to the extent we know it today, and the ADR culture in some Member States was either weak or non-existent. The 2011 Impact Assessment¹⁴ which had accompanied the original legislative proposal provided a snapshot of consumer ADR in that era:

¹⁴ SEC(2011) 1408 final. Pg. 22.

- 57% of EU consumers considered the resolution of problems more difficult when shopping cross-border;
- 78% of EU consumers did not take their dispute to court because they thought it would be too expensive, lengthy and complicated;
- 48% of EU consumers thought it was easy to resolve disputes through ADR rather than in court,
- only 9% of businesses reported having ever actually used ADR. 54% of businesses said that they preferred solving disputes through ADR rather than in court and 82% of traders who had already used ADR would use it again in the future.

Losses incurred by EU consumers because of problems with purchased goods or services were estimated at 0.4% of the EU GDP¹⁵. The ECC annual report 2010¹⁶ reported that out of 44,232 requests for advice and assistance with cross-border complaints and disputes, more than 900 cases (58.5% of the transferred cases) were passed on to out-of-court settlement bodies (ADR); i.e. approximately 0.02% of the total number of disputes. In contrast, below is a more recent snapshot of the transferred cases by ECC-Net to ADR implying that in many Member States, ADR is working well and that the ECCs and ADRs engage in knowledge sharing and cooperation activities at national level. Given the expertise of the ECC-Net in handling cross-border disputes, the Network is geared to take a more active role in facilitating cross-border ADR i.e. in signposting and assisting consumers to file a cross-border ADR claim by focusing on improving awareness and access to ADR.¹⁷

| Year | ECC transferred disputes to ADR, NEB, ESCP, EPO | To specifically ADR | Total Cases | % ADR |
|------|---|---------------------|-------------|-------|
| 2020 | 18,785 | 9320 | 167,788 | 6 |
| 2021 | 14,909 | 6713 | 126,751 | 5.5 |
| 2022 | 15,745 | 7118 | 126,898 | 6 |

The 2011 Impact Assessment¹⁸ reports that before the introduction of the Directive, 22% of the ADR schemes across the EU did not have a website of their own and half of the existing ADRs did not provide online access to ADR procedure. In 41% of ADR schemes, consumers had no information about the use of, the number of cases and the past performance of the ADR scheme. The ADR Directive had improved consumer information on ADR and obliged ADR entities to have online access.

The 2023 Consumer Conditions Scoreboard¹⁹ records that 45% of consumers felt that it is easy to settle disputes with retailers and service providers through an out-of-court body, compared with 34% who felt that going through the courts is easy. This perception difference is common to all Member States, although the difference varies considerably due to the different ADR landscapes found in each Member State.

The below graph (Figure 24) shows the respondents' perception on how easy it is to settle disputes with retailers and service providers through ADR and Courts: **It is easy to settle disputes with retailers and service providers through an out-of-court body (ADR) and courts - (strongly agree + agree, %)**

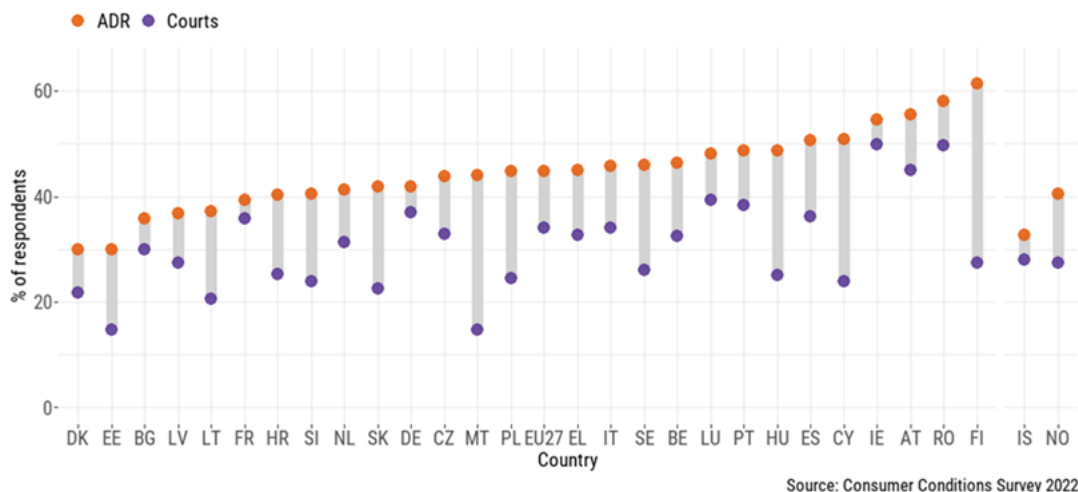
¹⁵ See Explanatory Memorandum to the Proposal to the ADR Directive; <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52011PC0793>

¹⁶ <https://eccnetmalta.gov.mt/wp-content/uploads/2022/04/ECC-NET-2010.pdf>

¹⁷ Recent results of the ECC-Net survey on the functioning of ADR and more information about how the ECC-Net foresees its role in the future of ADR: <https://www.eccnet.eu/news/eu-cross-border-dispute-resolution-agenda>

¹⁸ On page 25.

¹⁹ https://commission.europa.eu/document/89ea35fe-728f-4749-b95d-88544687583c_en



The oldest cohort (65+) is significantly less likely to agree with the ease of settling disputes via the courts (28%) or through an out-of-court body (39%). When asked about different hypothetical claims of varying value and duration in time, consumers were generally more willing to devote more time and effort to claims of higher value. While 58% of those surveyed would be prepared to drop their case and lose the money for a claim of EUR 50 or less, 31% would use ADR irrespective of the time required for a claim in the range of EUR 5,000 to EUR 10,000.

This evaluation will therefore seek to respond to the **following fundamental question:**

To what extent has the ADR Directive assisted consumers resolve their disputes with traders in a satisfactory manner and in line with its harmonised quality requirements?

2.4. State of Play on the Implementation of the ADR Directive across the EU

In view of the **minimum harmonisation approach**, the Directive does not prescribe a specific model in terms of the ADR entity's corporate identity, funding model or territorial and sectoral coverage. Equally, the Directive does not prescribe a specific type of ADR procedure or regulate the question of whether participation in the procedure is voluntary or mandatory or whether the procedure's outcome is binding or not. Member States may establish or maintain quality requirements that go beyond those laid down in the Directive. In complying with their obligation to ensure 'full ADR coverage' and designing their national ADR landscapes, **Member States therefore enjoy a considerable degree of flexibility in terms of implementation.**

Albeit slight delays by 16 Member States to communicate national implementing measures on time (by mid-2015), a transposition check concluded in 2018 confirmed that all EU countries transposed the ADR Directive in the national legislation in a satisfactory manner. Annex IV.A provides a list of amendments to the national legal frameworks implementing the ADR Directive, as communicated by the ADR competent authorities.

3. HOW HAS THE SITUATION EVOLVED OVER THE EVALUATION PERIOD?

Within the EU, 43% of retailers are unaware of the existence of ADR as a means to resolve disputes with consumers,²⁰ while 8% are aware but not willing to use it, and 13% report being aware but not finding a suitable ADR in their sector.²¹ The Consumer Conditions Survey of 2021²² revealed that only 5% of EU consumers who encountered a problem reported it to an ADR body, which accounts for roughly 2,250,000

²⁰ This figure accounts for all retailers, including those operating in sectors in which consumer disputes are unlikely to arise.

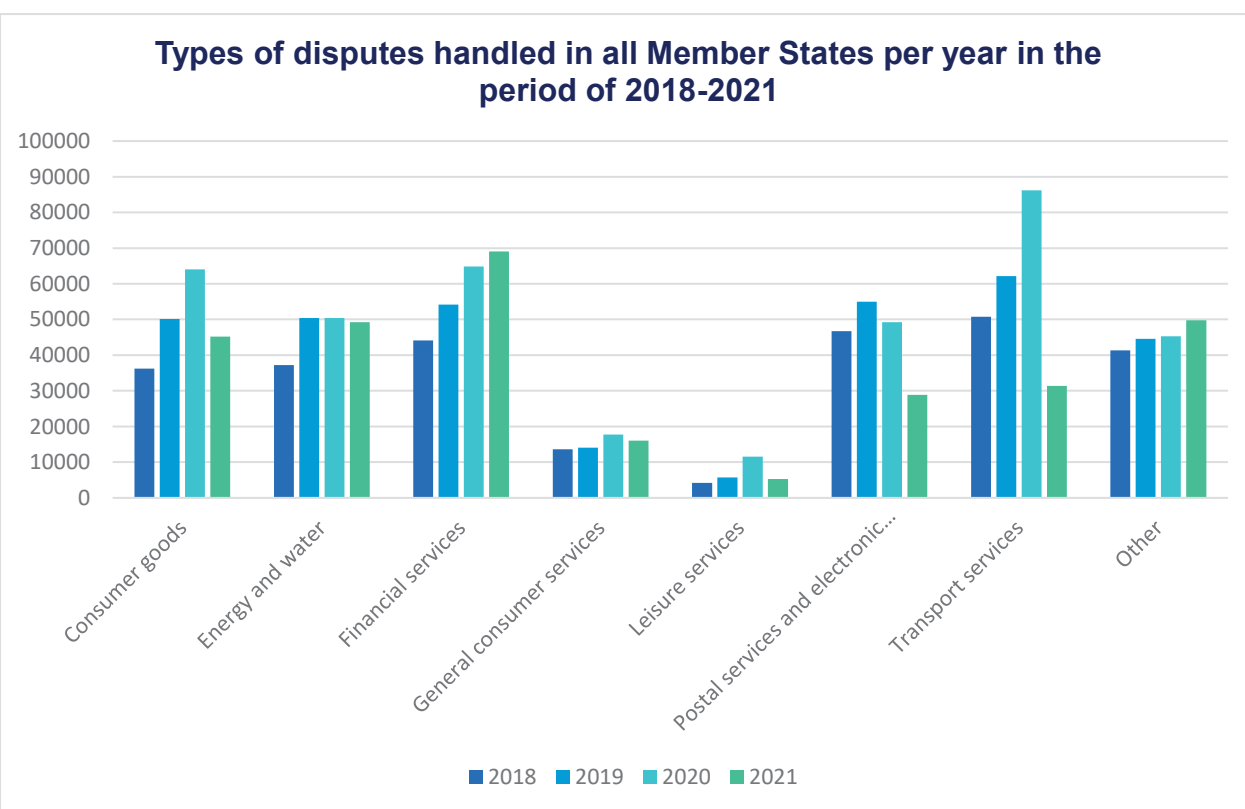
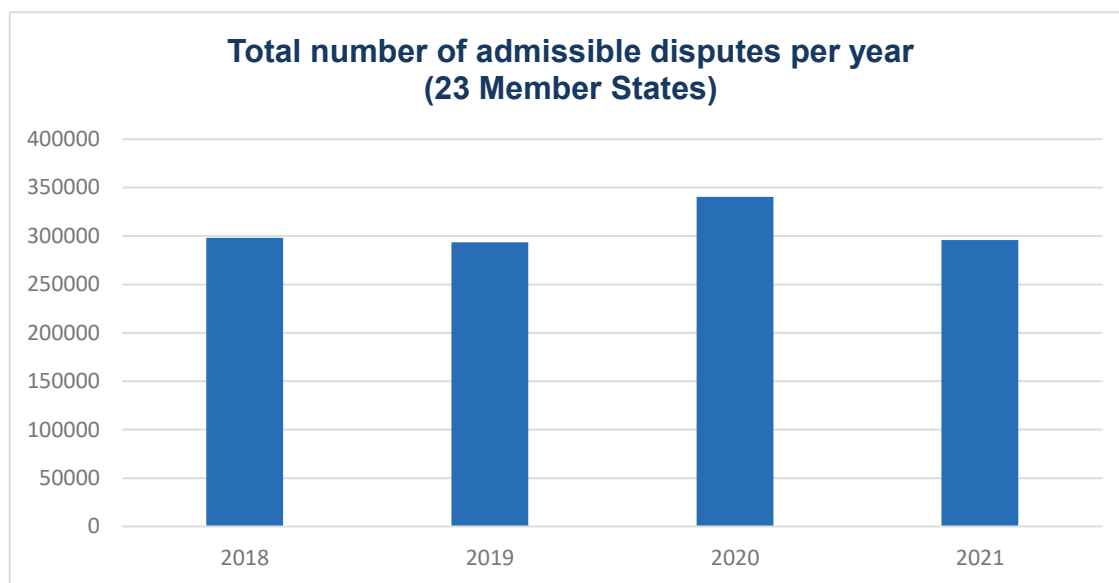
²¹ Consumer Conditions Scoreboard - Consumers at home in the Single Market, 2019, [consumers-conditions-scoreboard-2019_pdf_en.pdf](https://commission.europa.eu/system/files/2021-03/ccs_ppt_120321_final.pdf) (europa.eu).

²² https://commission.europa.eu/system/files/2021-03/ccs_ppt_120321_final.pdf.

consumers annually.²³ This figure represents a mere 0.75% of the total number of consumers, and only 15% of those who were dissatisfied with their retailer or service provider's handling of their complaint.²⁴

Statistics by ADR competent authorities

Based on data available from 23 Member States²⁵, it appears that the **use of ADR has been relatively stable since 2018, with the notable exception of 2020, which was an anomaly due to the impact of COVID-19** mostly due to travel services cancellations and the ensuing reimbursement requests that were refused by airlines and service providers in the tourism industry.



²³ 15% of the total (300 million consumers in the EU above 15 years old), i.e. 45 million consumers, experienced a problem and took action to solve it, out of which 5% brought the matter to an ADR body.

²⁴ On the other hand, available estimates regarding ADR in the UK suggest that only 28% of consumers in regulated sectors and 16% in non-regulated sectors are aware of its existence. (Resolving consumer disputes - Alternative Dispute Resolution and the Court System, 2018, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/698442/Final_report_-_Resolving_consumer_disputes.pdf).

²⁵ Data for BE, FR, IS, LI, LV, RO and MT was not reported for one or more years, and has therefore been excluded from this analysis.

The total number of admissible ADR cases between 2018-2021 range from around 500 (in HR) to over 264 000 (in DE). The highest number of disputes launched in a given year was in DE (over 80 000 cases in 2020), followed by IT (over 69 000 cases in 2020), closely followed by FR (67 000 cases in 2020). The lowest number of cases in a given year was in HR (49 cases in 2020). But when the population size is taken into account, the picture changes somewhat such that the highest density of ADR cases per capita are found in NO, EE and LT while the lowest are in the South and East of Europe. The average success rate for ADR cases (i.e. actual number of cases resolved by the ADR entities) between 2018 and 2021 varies enormously from just 17% to 87%. The majority of Member States (16) have a success rate of above 50%. This success rate depends on various factors, including: whether consumers had contacted the trader to try to resolve the dispute bilaterally before going to an ADR, whether the procedure is simple to follow, whether the ADR entity contacted is competent to resolve the dispute, whether the trader engages or not in the ADR process, etc. In most cases (all but four Member States), ADR is not a compulsory step before going to court²⁶.

Average time spent per dispute

The Directive provides a 90-day timeframe to resolve a dispute and allows an extension for complex cases even though no definition of complex cases is given. **Data shows that the average duration of an ADR procedure is 85 days**, although it varies from less than 50 days to 180 days depending on the case. The longest average ADR procedures ranged between 145-180 days (FI, SE, DK), while the shortest average procedures reported took less than 50 days (AT, HR, NL, RO). It is important to remember that these figures refer to averages across the Member States, ADR entities and years (2018-2021), meaning in some cases the ADR procedure took much less time or much longer. For example, Ireland reported that the average in one ADR entity was 25 days (telecom sector), whereas in another (financial services sector), the average case took 847 days across the 4 year period. Similarly, Italy reported annual average ADR procedures between 30 days and 390 days depending on the year and ADR entity. Lengthy procedures may be due to lack of staff or specific expertise within the ADR entity, more time needed to investigate the case especially complex cases submitted in specific sectors e.g. financial. Most Member States are keen on investing in digital tools which will make complaint-handling faster and more cost-efficient (from the submission of the evidence to decision-making) e.g. the use of AI bots would carry out legal assessments such as checking travel documents and analyse the chances of success in a claim; saving the ADR hours of work and achieving a good accuracy rate.

Diverse trader participation

The ADR Directive does not prescribe that ADR should be compulsory on traders, notably to respect one of its objective that the Directive should not prevent consumers and traders from exercising their right of access to the judicial system. In effect, national ADR frameworks are based on the culture, traditions and resources of the relevant Member States; as they deem fit. In six Member States trader participation is always required²⁷. In other seven Member States trader participation is mandatory in specific sectors²⁸ and in further four, trader participation is required under specific circumstances²⁹. Data on trader participation is too limited to draw any firm conclusions across the EU. However even for those Member States where trader participation amounted to 90-95% of the cases, the level of participation varies heavily across sectors. Best practices to increase trader participation are: national or EU-sector specific legislation making trader participation mandatory in problematic sectors, naming and shaming, or blacklisting traders who fail to engage in ADR, obliging traders to respond to an accredited ADR entity's invitation letter to participate in the ADR procedure and ensuring clarity on the intention of the trader to engage or not at an early stage.

Below are some examples where mandatory ADR applies:

²⁶ The exceptions being FR, PT, IT and DK.

²⁷ DK, HU, IS, LT, LV, SK

²⁸ AT, CY, CZ, DE, EL, ES, NL

²⁹ BE, HR, PT, SE. LI did not respond and in NO it was unclear if it was required or not.

| MS | Cases/sectors where trader participation in ADR is mandatory |
|----|---|
| CY | When a complaint is launched before the Office of the Commissioner of Electronic Communications and Postal Regulation and the Financial Ombudsman of the Republic of Cyprus |
| DE | For the sector of air transport, or if the obligation is included in the collective agreement for the given sector |
| EL | When a complaint is launched before the Hellenic Financial Ombudsman or the Hellenic Consumers' Ombudsman |
| HR | Trader members of the Chamber of Commerce are obliged to participate |
| NL | In the sectors of health insurance, and public housing |
| PT | Since 2019, it has been mandatory concerning conflicts under EUR 5 000, if the consumer requests so, and for any dispute concerning essential public services |
| SE | If the trader itself has undertaken to resolve disputes with consumers through ADR |

11 Member States reported trader participation to be high even if voluntary (i.e. on average trader participated in 90% of all ADR cases between 2018-2021). In some sectors/countries, trader participation is made compulsory not by law but because the trader is part of an organisation making ADR mandatory for its members. The **average percentage of disputes where the trader did not reply to the claim or refused to participate is generally less than 10%** of the total number of cases accepted for handling by ADR entities in the period 2018-2021; however this percentage fluctuates significantly among Member States:

- In Spain and Croatia, the average percentage of ADR disputes without trader cooperation in the years 2018-2021 is **35% and 20% respectively**. In Croatia this amounts to 91 cases, whereas in Spain this means there were over 46,000 ADR cases where the trader refused to participate.³⁰
- In four Member States (BG, EL, LU, SK) the recorded percentages are **between 5%-10%** of traders not willing to participate in ADR between 2018-2021. In addition, reported data from the residual ADR entity in Sweden also shows a non-participation rate of 10%³¹. Data reported by France for 2019 and 2020, show a non-participation rate of 10% and 6% respectively.
- In four Member States (AT, DE, IT, PL) the percentage for non-participation by traders was between **2%-5%** in 2018-2021.
- In two Member States (IE and SI) non-participation by traders is **less than 1%**. In addition, partial data from NL³² also shows non-participation by traders is under 1%. The Dutch ADR authorities confirmed the high participation rate was mainly in the context of sectoral ADR where their participation is regulated by trade associations rules.
- One Member State reported no cases where the trader refused participation (LT), as the trader's consent is not necessary in the ADR procedure (trader participation is mandatory).

³⁰ In 2021 in Spain, in 51% of disputes the trader did not participate (compared to the average rate of 30% across 2018-2020). This was a jump from the rate of 22% in 2019 and was followed by a significant decrease to 10% of non-participation in 2021. A rate of 51% of non-participation was also recorded in Croatia (compared to the average rate of 17% in 2018-2019 and 2021), which was a significant increase from the rate of 25% recorded in 2020.

³¹ Data for Sweden is available only for the residual ADR entity ARN (out of seven ADR entities). To calculate the average, the reported number of ADR cases examined on the merits during the year by ARN was used.

³² Data for the Netherlands is available only for three out of four ADR entities, namely SGC, KIFID and SKGZ. Data on trader participation for HC was not available. However it should be noted that the data included for SGC excludes those Committees where participation is mandatory, Hence the average non-participation rate reported is likely to be even lower

Some examples of how ADR schemes work

In Italy, ADR in telecommunications is voluntary. The Regional Committee for Communications (Corecom) receives 100,000 complaints a year from telecom users. The parties reach an agreement in over 70% of the cases.

As of 16 September 2019, all consumer disputes in Portugal up to EUR 5000 and disputes related to essential services (energy, telecoms, water and waste, postal services, public transport) are now subject to mandatory ADR when the consumer files an ADR claim. Due to the increase of disputes related to essential services, there is a cooperation protocol to ensure closer cooperation between ADR entities and the regulators of essential services.

In Denmark, where traders refuse to participate in the ADR procedure initiated by consumers, ADR entities may accept as correct the factual part of the complaint as submitted by the consumer if it has not been contested by the trader. This in turn increase the chances of the consumers to receive a decision in their favour. This decision will be legally binding if the trader still does not react.

ADR disputes launched by ADR entities where trader did not cooperate

| MS | 2018 | 2019 | 2020 | 2021 | Number of disputes in which the trader did not participate | Total number of disputes | % of disputes where trader did not participate |
|---------------------------|--------|--------|--------|--------|--|--------------------------|--|
| Austria | 232 | 259 | 359 | 365 | 1,215 | 25,823 | 4.71% |
| Bulgaria | 2 | 9 | 32 | 24 | 67 | 1,103 | 6.07% |
| Croatia | 6 | 45 | 25 | 21 | 97 | 487 | 19.92% |
| Germany | 2,177 | 2,262 | 3,013 | 2,277 | 9,729 | 263,956 | 3.69% |
| Greece | 578 | 786 | 724 | 655 | 2,743 | 38,157 | 7.19% |
| Ireland | 20 | 19 | 34 | 34 | 107 | 20,078 | 0.53% |
| Italy | 4,034 | 2,456 | 2,216 | 632 | 9,338 | 263,198 | 3.55% |
| Lithuania | 0 | 0 | 0 | 0 | 0 | 22 255 | 0% |
| Luxembourg | 115 | 82 | 119 | 109 | 425 | 4,584 | 9.27% |
| Netherlands ³³ | 31 | 22 | 90 | 6 | 149 | 38,124 | 0.39% |
| Poland | 8 | 133 | 127 | 1,235 | 1,503 | 71,785 | 2.09% |
| Slovakia | 19 | 18 | 24 | 13 | 74 | 1,386 | 5.34% |
| Slovenia | 3 | 0 | 2 | 0 | 5 | 896 | 0.56% |
| Spain | 11,100 | 12,980 | 12,069 | 21,076 | 57,225 | 163,396 | 35.02% |
| Sweden ³⁴ | 602 | 732 | 1229 | 1788 | 4,351 | 41,405 | 10.12% |

³³ Data for Netherlands is available only for three out of four ADR entities, namely SGC, KIFID and SKGZ. Data on trader participation for HC was not available. However it should be noted that the data included for SGC excludes those Committees where participation is mandatory. Hence the average non-participation rate reported is likely to be even lower.

³⁴ Data on the number of disputes where the trader did not participate for Sweden is available only for the residual ADR entity (out of seven entities). Therefore, the total number of disputes also includes data only from the residual ADR entity.

4. EVALUATION FINDINGS

This Chapter is based on the data collected from ADR actors, including consumers obtained through:

- Studies: the ADR data collection study, the ADR Behavioural study and the mini-legal study³⁵;
- The multi-lingual backward-looking public consultation published on the “Have your Say” website between 4 April and 27 June 2022;
- The virtual ADR Assembly which the Commission hosted on 28 and 29 September 2021;
- The workshop on digital redress tools during the Consumer Summit which took place on 10 February 2022;
- The hybrid cross-border ADR roundtable which took place on 21 June 2022;
- Workshops organised by the Commission targeting the ADR entities handling travel, financial and energy disputes respectively;
- Conferences organised at national level to which the Commission participated and contributed actively;
- National ADR reports submitted by the ADR Competent Authorities in July 2022;
- Case studies and interviews conducted in view of the ADR data collection study.

More detailed information about the consultation methodology and stakeholders views are found in the dedicated Annex to the Impact Assessment.

4.1. Effectiveness

4.1.1. *How successful has consumer out-of-court dispute resolution, in line with the ADR Directive, been for consumer disputes, in quantitative and qualitative terms?*

Since the entry into application of the ADR directive, the Commission received less than ten complaints about its effective application via the CHAP complaint-handling platform, petitions or citizen letters. These complaints have been addressed by the Commission through bilateral contacts with the Member States concerned, showing that there are limited problems of compliance to the Directive by the Member States³⁶.

4.1.2. *What are the challenges flagged by stakeholders?*

Diverse trader participation questioning whether or not voluntary participation is the best solution

ADR is based on the concept of voluntary participation of the parties to achieve an amicable solution for the dispute in question. From the data in hand, there is **no evidence that mandatory trader participation in ADR is a better solution for consumer outcomes** and neither that voluntary ADR is a systemic failure of the Directive to ensure efficient access to ADR across the EU. National or EU sector-specific legislation (e.g. see Article 26 in the Electricity Directive³⁷) may make ADR mandatory (either in an overarching manner, for specific sectors only, or where disputes do not surpass a specific amount). If the ADR Directive had to introduce mandatory ADR, it would have potentially entered into conflict with constitutional rights in some Member States. One also has to bear in mind the capacity of ADRs themselves potentially facing an immense workload if ADR was mandatory across all sectors. In this context, the specificity of ADR entity in the energy sectors has to be noted, where most ADR follow the

³⁵ https://commission.europa.eu/live-work-travel-eu/consumer-rights-and-complaints/resolve-your-consumer-complaint/alternative-dispute-resolution-consumers_en#adr-related-studies

³⁶ E.g. delayed establishment of the financial ADR Body to resolve consumer financial disputes in Spain, the role of consumer organisations in the composition of Hungarian ADR entities, the requirement of mandatory legal assistance in certain ADR disputes in Italy, lack of independence of ADR entities in Latvia, complexity in the ADR framework in France, etc.

³⁷ Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU; <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32019L0944>.

“Ombudsman-structure” with guaranteed access to adequate financing which allows them to handle also big-workloads in a cost-effective manner – but this cannot be guaranteed for all sectors.

The issues are **rather to be looked at in how the various Member States have transposed and implemented the Directive** including where there could be some specific sectors where a key ADR entity is not functioning well such as financial services ADR in Spain due to a massive delay (at least 4 years) to establish a public Financial Ombudsman.³⁸

Trader compliance to an ADR outcome is uneven

Recital 49 of the ADR Directive provides that the Directive does not require the outcome of the ADR procedure to be binding on traders. Thus, the extent to which an ADR outcome is binding on traders depends on the national rules in each Member State. At present, the ADR outcome is only binding in certain ADR procedures/under certain conditions in 17 Member States, while it is never binding in eight Member States. Although many Member States lack accurate data on the level of compliance of traders with the ADR decisions, almost a third of Member States interviewed in view of the ADR data collection study noted that even where ADR decisions were not binding, traders generally still complied with the result³⁹, for instance because traders were generally committed to comply with the result if they had already agreed to participate in ADR⁴⁰ or where subscription based ADR entities, meant traders were committed to follow their decisions⁴¹. Voluntary compliance was also driven by traders’ wish to give good customer service and find solutions. The main factors which impact the level of compliance of traders are the legal effects of the ADR decision, the extent to which the compliance by traders is monitored and if the decision is binding, the extent to which it can be/is enforced in practice. Some Member States even introduced the “name and shame” and blacklisting practices which according to them induces positive competition between traders. Although this option may be a go-to option for Member States, politically it is difficult to be introduced in the Directive as it may be seen detrimental to traders’ reputation and potentially increase litigation by traders against ADR entities.

In Finland, the success rate of the traders’ compliance is 80-100% and this is linked not to the regulatory approach but to the culture behind it and the importance of traders’ reputation and cooperation.

It must be concluded that there is **no systemic issue in the ADR Directive regarding the need to strengthen the enforceability of ADR outcomes** but rather that it may be a factor to address in certain Member States, in the way the Directive has been transposed, the way a certain ADR entity functions or in relation to sector-specific business cultures.

Low uptake of cross-border ADR

Article 2 (Scope) provides that the ADR Directive applies to domestic and cross-border disputes between consumers residing in the Union and traders established in the Union. Article 5(2)(e) provides for Member States to ensure that ADR entities “*accept both domestic and cross-border disputes*”. According to Article 14, “*consumers can obtain assistance to access the ADR entity operating in another Member State which is competent to deal with their cross-border dispute*”. The Directive does not require ADR entities to accept claims against traders located in other Member States. In practice, consumers who wish to settle a cross-border contractual dispute have in the vast majority of cases to approach an ADR entity located abroad.

Cross-border ADR disputes remain rare because there are too many barriers according to stakeholders, including: low awareness by consumers purchasing in a cross-border context that national ADR entities can accept their cases and difficulties for ADR entities due to the lack of knowledge of the legal framework in another jurisdiction.

³⁸ https://cincodias.elpais.com/cincodias/2021/01/20/mercados/1611165017_362328.html [accessible on 6 March 2023].

³⁹ AT, BG, DK, EE, ES, FI, IS, NO, SE.

⁴⁰ AT, BE, DE.

⁴¹ Two other Member States (NL, SE) linked the high compliance rate with the fact that these were

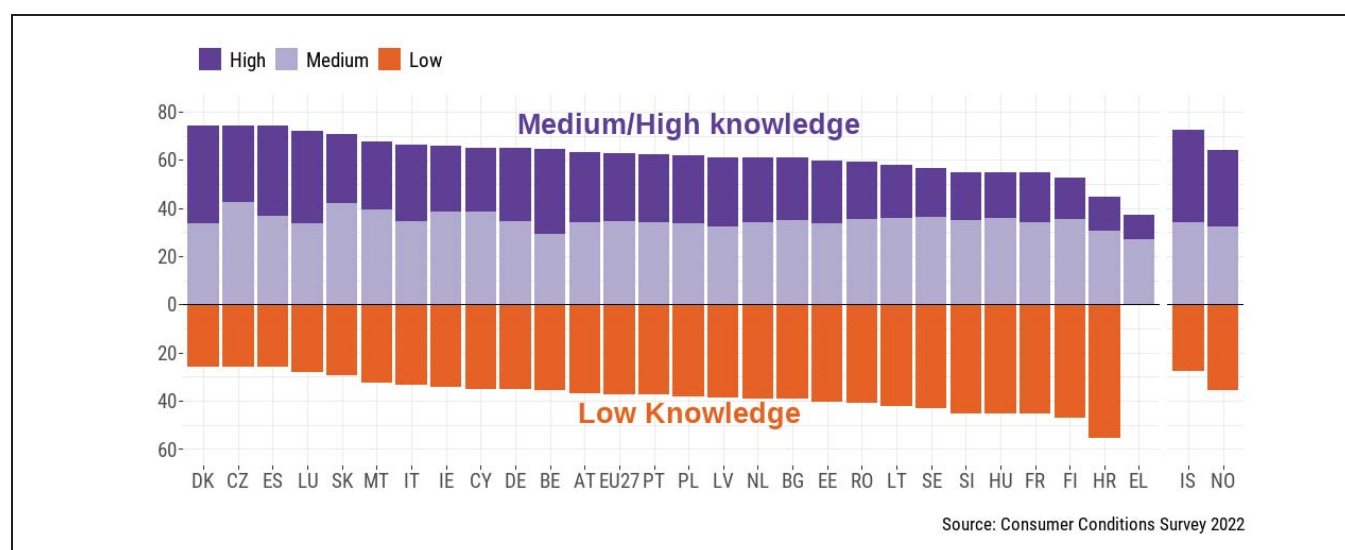
The Brussels I Regulation (recast) (EU) No 1215/2012⁴², which applies to the courts and tribunals (and not to out-of-court procedures) determines that the court of the country where the consumer resides has jurisdiction in cross-border cases over consumer contracts. The purpose of this rule, according to Recital 18, is to protect a weaker party by rules of jurisdiction more favourable than the general ones.

The ADR Directive follows a different approach: as a rule, the consumer will need to use the ADR entity of the trader's country⁴³. This adds complexity layers for the consumers: the need to interact with a foreign entity, perhaps in a language they do not understand and/or bear the translation costs. Moreover, while Article 11 of the Directive stipulates that in cross-border cases the ADR entity shall not deprive the consumer of the rights mandatory in the country of their domicile, in practice ADR entities struggle with applying foreign law.⁴⁴ Consequently the number of cross-border cases is very low. This should be considered as a serious and systemic issue of the ADR Directive as it does not provide enough guidance and practical elements to ensure access to consumers for cross-border disputes.

ADR awareness in general versus consumer rights awareness

According to findings from the 2022 Consumer Conditions survey⁴⁵, most EU Consumers don't have a good knowledge of their economic consumer rights. Based on knowledge of four rights – related to the cooling off period, one sided change to contracts, faulty product guarantee and unsolicited products - consumers were categorised according to their overall level of knowledge: high (aware of at least three of the above rights), medium (aware of two) or low (aware of less than two). Across EU countries more than a third of consumers had a low knowledge of their rights (37%), compared with 28% with high knowledge. There was significant variation in these proportions between countries.

Overall Knowledge of Consumer Rights across the EU



Stakeholders contend that awareness of ADR is low. However, there is no indication that this would be lower than consumer awareness of their rights in general as shown in the graph above. The already low level of understanding of consumer rights is worsened when consumers are faced with the complexity of legal terms and conditions governing transactions, especially in the digital world. Where ADR process is complex and time-consuming to understand, as notably is the case in cross-border ADR, consumers are put off from pursuing a low-value claim, or when they are not convinced that it would lead to a successful solution. In most cases they will drop the claim if an initial contact with the trader proves unsuccessful or when they read that the trader will not participate in an ADR process (e.g. as a consequence of general

⁴² Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast), OJ L 351, 20.12.2012, p. 1–32.

⁴³ Article 5(1) of the ADR Directive: Member States shall facilitate access by consumers to ADR procedures and shall ensure that disputes covered by this Directive and which involve a trader established on their respective territories can be submitted to an ADR entity which complies with the requirements set out in this Directive.

⁴⁴ Article 5(4)f of the ADR Directive essentially allows the ADR entities to reject consumer complaints if “dealing with such type of disputes would seriously impair the effective operation of the ADR entity” – which, anecdotally, has been used by ADR entities to reject cross-border complaints written in a different language or where foreign law would be applied

⁴⁵ https://commission.europa.eu/document/89ea35fe-728f-4749-b95d-88544687583c_en

information obligations imposed by the ADR Directive on traders, including those not willing to participate and who will say so).

Lack of understanding of eligibility requirements

There is also a lack of understanding on the functioning of ADR entities from the consumer side as reflected in the high number of inadmissible complaints (See Annex IV.C). It seems that consumer campaigns or user-friendly information about the benefits of ADR performed in the past for example by the European Consumer Centres⁴⁶, the ADR entities, the European Commission or other consumer associations, did not allow to raise the awareness of consumers. This however goes hand in hand with the low level of knowledge of consumers on their rights which has not improved according to successive Commission consumer surveys.

In France, the CECMC reported that only 67,000 out of 168,000 complaints submitted to ADR entities in 2020 were accepted i.e. not considered as inadmissible in line with Article 5(4) or refused, despite ADR entities using tutorials, blogs or newsletter to educate consumers on ADR. In approximately, 70% of inadmissible cases, consumers did not know they had to contact traders before reaching out to the ADR entity.

The level of awareness is uneven across sectors. For example, awareness is higher in the energy/utilities and financial sectors where well-established ADR entities exist and where sector-specific EU legislation requires the compulsory use of ADR to assist vulnerable consumers.

Uneven compliance by businesses to ADR information requirements

Article 13 of the ADR Directive requires traders to provide the website of the ADR entity they are affiliated with in case of a dispute, although, unless national law provides for mandatory trader participation, they may decide not to participate in the ADR process and therefore not give such an information or explain that they will not participate to ADR schemes, (implying they prefer going to court instead). This information is to be provided in a clear, comprehensible and easily accessible way on the traders' website, where one exists and if applicable, in the general terms and conditions between the trader and consumer.

In 2022, the Commission carried out an ADR behavioural study⁴⁷ to assess ADR information to consumers on websites of traders and ADR entities as to how it affects awareness and take-up of ADR. The study concluded that the way the information is presented has a significant impact on consumers' propensity to use ADR, as well as their understanding. Separating ADR information on to its own dedicated, easily accessible page, or raising the salience of ADR information by signposting it at the top of the page, had the largest effects on increasing consumers' propensity to use ADR and may discourage consumers from entering into any agreement with traders who do not wish to join ADR schemes. ADR information in the terms and conditions page is less effective because consumers tend not to visit this page (6%) but instead, they go to the "returns and complaints" page (43%). On the other hand, if an ADR entity website highlights the benefits of ADR relative to court via a salient table comparing the attributes of the two routes significantly increases the consumers' propensity to choose ADR. Such pro ADR disclosure are however not provided for in the ADR Directive and are unlikely to be used by traders as they generally do not want to encourage disputes and would prefer amicable settlements. The Directive however does not provide for sanctions for the breach of information obligations under Article 13 – this is entirely left to national law.

⁴⁶ Article 5(2) of the ECC-Net Vademecum requires ECCs to promote consumer ADR and to facilitate access. More information is found on the website <https://www.eccnet.eu/consumer-rights/how-enforce-my-consumer-rights/alternative-dispute-resolution>.

⁴⁷ ADR Behavioural study; summary available here: [Alternative dispute resolution for consumers \(europa.eu\)](https://ec.europa.eu/eccnet/en/adr-behavioural-study)

Other barriers

Some stakeholders suggest that access to ADR is made difficult in certain cases due to its cost for consumers. In most countries, ADR entities offer ADR service free of charge or in any case much cheaper than the costs for accessing a court. However, when ADR is not totally free, the consumers calculate the eventual fee and other costs such as the time needed including to understand the process, against the value of the claim. Disproportionate eligibility criteria are also cited by stakeholders in relation to specific countries or sectors and in general the digitalisation of ADR procedures may be a barrier for those with low digital literacy.

A French consumer organisation flagged that in banking disputes, consumers must first contact their banks and then have to follow multiple mandatory steps before being finally able to reach out to an ADR body discouraging many consumers from launching an ADR claim.

Spain reported that special attention is paid to customers with less technological knowledge (usually senior citizens) who require a more personalised treatment. Claims can be lodged in writing. Moreover, there are guidelines and phone information services that can help most vulnerable persons to file their complaint.

The diversity of the ADR landscape may also make it difficult for consumers to find a relevant ADR body, especially in Member States where there are many ADR entities, or where accredited and non-accredited ADRs exist and consumers would not be able to tell the difference. In some Member States, consumers have to reach out to more than one ADR entity to resolve a dispute given the limited competence of each ADR entity. To avoid that consumers remain unsuccessful in trying to find a competent ADR body, the ADR Directive in recital 24 encourages the setting up of residual entities to ensure there are no coverage gaps. Nevertheless, there is no residual ADR entity in ten Member States.

Conclusion

The evaluation shows that ADR Directive is correctly implemented by all Member States, even though some transposed models may prove to be more efficient than others. One systemic issue which has been identified in terms of effectiveness is in relation to access to cross-border ADR.

4.2. Efficiency

There is no conclusive evidence on the costs borne by the various actors needed to achieve the results of the ADR Directive. A lack of quantifiable data from Member States makes it difficult to carry out a detailed assessment of the Directive's regulatory burden. The extent to which costs have been incurred to implement the Directive in individual Member States largely depends on the national ADR framework in each Member State, including on the existing ADR entities and competent authorities before the Directive was adopted.

4.2.1. What are the costs for each category of ADR actors?

The Directive introduced obligations that were expected to have the following cost implications:

- The setting up of a competent authority and a mechanism to assess and monitor the ADR entities established on its territory;
- A national ADR framework covering all market sectors i.e. either setting up new structures where ADR was non-existent or adding new structures to cover all sectors;
- ADR entities having to set up and maintain a website;
- ADR competent authorities and ADR entities respecting reporting obligations;
- Traders having to provide ADR information to consumers;

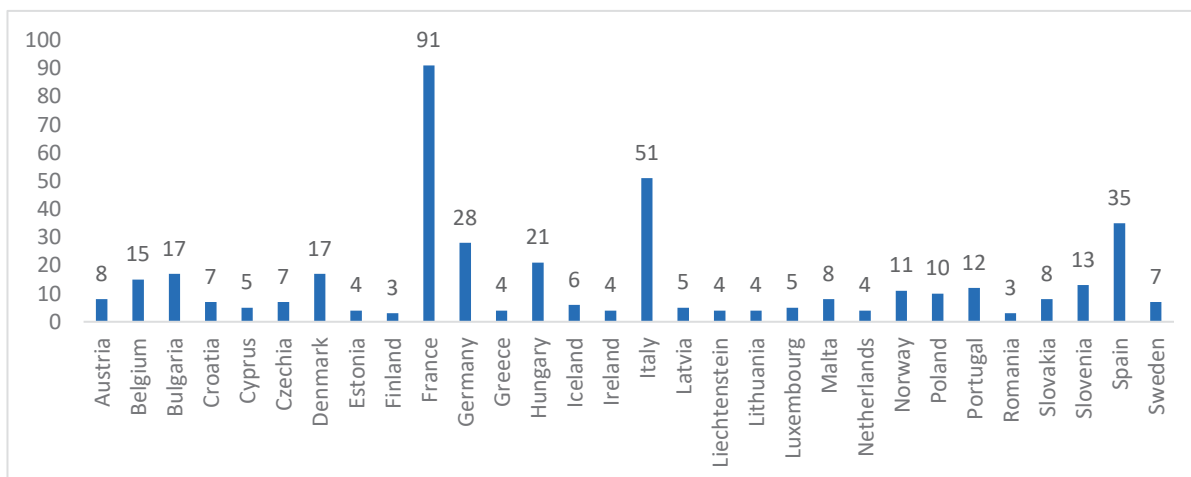
- Consumers to access ADR free-of-charge or at a nominal fee;
- The Commission to support ADR entities using the Consumer Programme, list all ADR entities in compliance with the Directive.

Costs to ADR Competent Authorities

ADR Competent authorities incur costs to accredit and monitor the process of ADR entities. Most competent authorities consider accreditation to be the most time-consuming (and therefore costliest) task, as it is necessary to check the conditions, evaluate the application, issue a decision, register the entity in the list of national ADR entities and notify the Commission, providing information on the registered office, authorised natural persons, detailed rules of ADR between consumers and traders, etc. This however is only particularly burdensome where there are many ADR entities so mainly in FR, IT and ES. The accreditation process can also represent high administrative burden for ADR entities this being a potential reason why some ADR entities prefer not to be accredited⁴⁸. Some ADR entities see the reporting requirements - the publication of annual activity reports per Article 7(2) ADR Directive as burdensome and more of a “tick box” exercise. The extensive reporting by ADR competent authorities to the Commission every 4 years is also considered very time-consuming.

About a third of the Member States have less than one full-time equivalent (FTE) carrying out competent authorities’ work. Seven have between one and three, and with 5.5 FTEs France is the exception, and this relates to the unusually high number of ADR entities in France combined with a complex verification processes.

Number of accredited ADR entities per Member State



Costs to the European Commission

The European Commission incurs limited costs to oversee the implementation of the ADR Directive (1 FTE per year). EUR 100,000 per year have been attributed from the Consumer credits in the years 2018-2022 to support the digitalisation of ADR entities and their networking. Managing and publishing the list of ADR entities is part of the overall costs for the ODR platform and is considered a negligible cost.

Costs to ADR Entities

ADR entities’ main costs are the human resources to manage them and provide the ADR procedures. Their different tasks prescribed by the ADR Directive are:

- Providing quality ADR dispute resolution procedures,
- Training ADR staff,

⁴⁸ There are non-accredited ADR entities in AT, BE, DE, DK, ES, FR, IE, IS, LU, NL, PL, PT, SE and SI.

- Providing information to consumers and traders⁴⁹, notably through their website, enabling consumers to submit a complaint online,
- Preparing and publishing annual activity reports⁵⁰, including information on the number and types of complaints, their outcomes, the rate of compliance and any systemic issues identified and recommendations as to how such problems can be avoided or resolved in future, to raise traders' standards and to facilitate the exchange of information and best practices, notably on their website,
- Cooperating with ADR entities in the resolution of cross-border disputes and conducting regular exchanges of best practices as regards the settlement of both cross-border and domestic disputes⁵¹,
- Providing biannual communication complaints information to competent authorities⁵²,
- Providing information for the accreditation process,
- Overhead costs, including IT and compliance to GDPR costs,
- Translation costs, where relevant.

To take an example of costs for an ADR entity, in 2020 the functioning of the Maltese Office of the Arbiter for Financial Services cost EUR 571,592 to resolve 95 “large disputes” and 1,068 “small cases” so an average cost of EUR 492 per request.

The lack of information, including the financial benefits for consumers and traders, does not allow to calculate the minimum number of disputes ADR entities would need to solve to cover their operations. ADR authorities were also asked whether they had ever tried to calculate the minimum number of disputes. Again, no Member State has performed such a calculation. However, as consumer disputes are usually of a low cost, **the minimum number of disputes per ADR entity should be quite substantial to ensure cost-effectiveness**. The fact that ADR entities may have other responsibilities complicates cost calculation.

The rate of rejected cases by ADR entities is high in some Member States (up to 60% between 2019-2022). Most frequently, reported reasons included “no previous attempts to contact the trader” followed by “the dispute was previously assessed by another ADR entity or a court” and “the value of the claim has not reached an applicable threshold”. The lack of understanding of when and how to use ADR leads entities to waste resources on these cases. Reducing the number of inadmissible cases is key to improve cost-effectiveness.

In Belgium, 2575 of the complaints out of the 4100 complaints received in 2021 by the national portal for consumer claims (SMC) were dismissed for various reasons; notably incomplete applications or the SMC is not competent. is often copied from letters sent by consumers to businesses. Consumers clearly use SMC as a means of pressure. Consumers who use this tactic receive a letter informing them that SMC does not declare their case admissible however SMC stands ready to assist if they still fail to reach an agreement with the company.⁵³

In most Member States, the entire ADR budget relies heavily on public funding⁵⁴, private funding⁵⁵ or a mix of public and private funding⁵⁶. See Annex IV.B for more information.

⁴⁹ Article 5(2), Article 7(1), Article 9 and Article 15 ADR Directive.

⁵⁰ Article 7(2) ADR Directive.

⁵¹ Article 16 ADR Directive.

⁵² Article 19(3) ADR Directive.

⁵³ https://mediationconsommateur.be/sites/default/files/content/download/files/smc_rapport_annuel_2021-s_0.pdf

⁵⁴ In 22 countries there are some ADR entities that are funded by the state budget. In some cases, these ADR entities are set up by law. Only in three Member States are all ADR entities publicly funded (HU, LT, and LV).

⁵⁵ In 22 countries there are ADR entities that are self-funded (such as CZ), or professionals or federations of professionals (such as FR, LT), which are thus indirectly funded by the traders through the membership fees.

⁵⁶ In 14 countries, there are entities that are privately funded but also receive public money.

Costs to Traders

The overall administrative costs that traders incur depend on the funding model of ADR (see above). In some countries, traders bear the costs of some or all ADR entities, while in others, ADR entities are publicly funded and may ask a marginal fee to traders. Even where traders bear the costs of ADR entities, the model can vary. In some cases, traders pay membership fees for instance, which are fixed costs, or they pay a fee for each dispute (or both), which means these costs vary depending on the number of disputes. Where traders pay participation fee, this can range from EUR 10 (CZ) to EUR 100 (IE) and even within a country it depends on the sector.⁵⁷

In addition, traders bear the costs of dispute resolution itself, in the form of the financial and human resources needed for dealing with a dispute, including:

Time spent on each dispute, for submitting information and evidence, etc.,

The cost of legal advice (lawyer fees) – if applicable.

Yet, information on these costs is not generally available and will vary widely from one sector to the other, one dispute to the other, etc. In any case, such costs are directly related to the operation of a business which needs to ensure the correct handling of consumers complaints and after sales questions.

Finally, traders incur the costs of the financial and human resources needed for informing consumers of the address and website of the ADR entity/entities that cover their activities. They need to provide this information on their website if they have one, and in the general terms and conditions of sales or service contracts between the trader and the consumer⁵⁸, if applicable. Nevertheless, these informational aspects are considered marginal costs, what is most costly for a business is keeping abreast of all the relevant EU retail market legislation; especially for SMEs to be compliant but also to be able to answer consumer claims.

Costs to consumers

Consumers incur administrative costs when going for dispute resolution. These take the form of consumer fees and time needed for dealing with a dispute. To facilitate consumers' accessibility to ADR, Member States could either make the procedures free of charge or ADR entities could impose a nominal fee (i.e. affordable and not restricting access to ADR). Of the 25 Member States that answered the survey question on consumer fees⁵⁹, 12 Member States reported that ADR is always free of charge for consumers (i.e. across all ADR entities) in their country. In the remaining 13 Member States, some ADR entities do charge a fee, and these vary significantly: while in 10 Member States the fees charged do not exceed EUR 70, in a few Member States the fees charged can go up to EUR 100-EUR 300 or even up to EUR 1000 in certain cases concerning financial services where the value of disputes may be high.

Overview of fees charged to consumers by ADR entities

| Range of fees charged | Member States |
|-----------------------|---|
| Free of charge | AT, BG, EE, FI, FR, EL, HU, LV ⁶⁰ , LT, LU, RO, ES |
| Up to EUR 10 | SK (fee ranges from EUR 0 to EUR 5) CZ, PT ⁶¹ , SE (fee ranges from EUR 0 to EUR 10), |

⁵⁷ More information on trader fees is found on page 128 of the [ADR Data Collection study](#).

⁵⁸ Article 13.

⁵⁹ IS, MT, NO and PL did not provide detailed information on the consumer fees charged. Iceland reported that most ADR entities charge a small case handling fee, while Norway reported that a minority of the ADR entities require a small fee from the consumers. See more information in [Annex IV.B](#).

⁶⁰ However, two ADR bodies request to pay security deposit, which is refunded, if the claim is justified.

⁶¹ This is the case for two ADR entities in PT. For two other ADR entities, the ADR competent authority noted the fee depends on the value of the damage.

| | |
|--------------|--|
| Up to EUR 50 | SI (fee ranges from EUR 0 to EUR 20); DE (fee ranges from EUR 0 to EUR 30) and IE (fee ranges from EUR 0 to EUR 50) |
| Up to EUR 75 | DK (fee ranges from EUR 0 to EUR 54); IE (fee ranges from EUR 0 to EUR 60) and HR (fee charged is EUR 66) |
| Over EUR 100 | NL (fee ranges from EUR 0 to EUR 127.5); BE (fee ranges from EUR 0 to EUR 332 ⁶²); CY (fee ranges from EUR 20 to EUR 1000 ⁶³). |

Additional costs to consumers may include legal fees if they seek legal advice and/or experts' costs with daily/hourly fees varying depending on the country, sector, experts' experience, time needed for the case, length of the report, etc.), which they can share with the trader if both parties agreed to use an expert, for example, to produce a report on the goods or services subject to dispute. Other costs which might be incurred are translation costs and the consumers' effort and waste of time, especially when the trader does not cooperate. The Justice Scoreboard 2022⁶⁴ shows that timeframes and court fees differ significantly across the EU Member States; hence putting off many consumers from lodging a court case to resolve a consumer dispute.

The dissuasive cost of court cases for consumer disputes instigated the need to provide the ADR Directive. No evolution has occurred since 2013 which would make court cases comparatively less costly (on the contrary) and therefore **ADR remains the most cost advantageous system both for traders and consumers, but also for Member States which would have instead of financing ADR to give greater financing if each small claim dispute had to go to a court.**

4.2.2. *Has the ADR system permitted to reduce consumer detriment?*

The improved ADR landscape has been beneficial to traders and consumers as there are on average 300,000 ADR cases per year in the 23 Member States which reported data to the Commission. However, what is important is to assess whether the ADR Directive could be expected to lead to a higher number of cases and a proportional further detriment compensated thanks to an ADR.

The extent of this detriment can be measured by considering the consumer harm that is strictly related to the missed opportunity of not using ADR. By taking into account the 120,000 eligible disputes⁶⁵ (i.e. filed by a consumer and confirmed by an ADR entity, as per data transmitted by ADR Competent authorities to the Commission in 2022) that are not accepted by businesses on a yearly basis, the maximum consumer detriment (including cases where consumers were wrong⁶⁶ in their claim and the ones they successfully pursue in court⁶⁷, and considering that not all the value of the purchase is part of the dispute or it is given as amicable solution) amounts to EUR 22.2 million per year.⁶⁸ In addition to this, the detriment of consumers who brought a matter to the ADR entity which, for various reasons, was not deemed eligible (including extra-contractual claims) must also be taken into account. This group comprises 1.95 million consumers,⁶⁹ and the potential additional detriment stemming from the fact that they cannot settle their

⁶² Only four of the 15 entities ask the consumer to pay a fee.

⁶³ The cost reported by CY is EUR 640 based on an 8-hour conciliation or mediation procedure. For every additional hour of conciliation or mediation, there is an additional fee of EUR 40 per hour for consumers regarding disputes of amounts over EUR 10 000 – the maximum amount paid by a consumer is EUR 800. For arbitration, the maximum amount paid by a consumer is EUR 1,000. See European Commission, Cyprus Consumer Center for Alternative Dispute Resolution, procedure, A. Fees details, available at: <https://ec.europa.eu/consumers/odr/main/?event=main.adr.show2>.

⁶⁴ https://commission.europa.eu/system/files/2022-05/eu_justice_scoreboard_2022.pdf

⁶⁵ See annex IV for further information. In a nutshell, this number is the result of the difference between the number of eligible disputes (300 000) and the number of disputes that are actually referred to ADR entities (180 000).

⁶⁶ A few, considering a British study from 2018, 90% of consumers would get a compensation following an ADR. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/698442/Final_report_-_Resolving_consumer_disputes.pdf.

⁶⁷ For a low value dispute, there is little chance the case ends up in court.

⁶⁸ 120,000 x EUR 185 which is an estimate of the average amount brought as dispute to an ADR based on data from the EU ODR Platform. This number is realistic as EUR 121 is the average value of a retail purchase, and it is normal that values brought to a dispute are more on the higher end of the statistical distribution (source: average value of purchases on retail shops, <https://www.wolfgangdigital.com/kpi-2019>).

⁶⁹ As seen above in the problem definition, under 'access barrier to ADR', the number of consumers potentially willing to refer a dispute to an ADR entity is 2,250,000. By assuming that each consumer is involved in one dispute per year, and by taking into account that the average number of eligible ADR

dispute through ADR amounts to EUR 361 million per year⁷⁰, for a total annual detriment of **EUR 383 million**.

4.2.3. *Have ADR entities developed cost saving measures since the entry into force of the Directive?*

Significant investments by ADR entities in digitalisation has rendered ADR more cost-effective and increased satisfaction rate among users. ADR entities need a safe, secure and intuitive tech solution to improve negotiations and this infrastructure may come at a high cost at the very beginning (investments in VPN, anti-virus/anti-malware software, spam filtering, etc) although in the long-term, it permits a lot of cost savings and avoids endless processing timeframes. COVID-19 accelerated the transition to remote proceedings and more reliance on emails. Remote hearings are effective and more economical than in-person proceedings. While email is the primary mode of communication in most ADRs, it can pose problems such as limits to file-size attachments and it is not always secure.

ConciliaWeb, a digital platform to solve disputes in the electronic communications market in Italy has facilitated access to the conciliation procedure. Within 12 months since its introduction in 2018, there was an increase of 28% in requests.

Digitalisation in ADR is mainly done in two ways, either by using technology to support or enable existing manual processes of administering dispute resolution, and/or by using technology to fundamentally re-engineer the dispute resolution process.

In the legal context more broadly, other AI technologies can also be regarded as important, such as natural language processing (the application of computational techniques to the analysis and synthesis of natural language and speech)⁷¹, as well as sentiment analysis (the process of computationally identifying and categorising opinions expressed in a piece of text).⁷²

Half of the respondents in the backward-looking public consultation⁷³ were open to the use of AI in consumer disputes but felt that the final decision should be made by a human. Around one third of the respondents would use AI but would like to know in advance or be assured that they can appeal the decision. By contrast, just over a third of the respondents were against these systems as they found them too difficult to understand and felt that AI might complicate any disagreement. Finally, only a sixth of the respondents expressed distrust in AI altogether.

Conclusion

ADR costs vary significantly between Member States depending on the existing infrastructure, funding model, number of ADR entities accredited and monitored, consumer and trader fees as well as whether there existed ADR structures previously. The lack of data on costing, makes it difficult to calculate the cost-effectiveness of ADR. However, compared to costs that would be incurred by consumers, traders and Member States if all consumer disputes had to be dealt with in court, the ADR system is much more cost-efficient. Some cost savings could possibly be made by reducing certain reporting burden that have been assessed as disproportionate by many stakeholders. Facilitating digitalisation of ADR and the use of modern technologies, i.e. containing Artificial Intelligence tools, is also a way of increasing the efficiency of ADR systems.

disputes per year is 300,000, it is possible to estimate the number of consumers who are willing to use ADR but cannot do so because the disputes is deemed ineligible.

⁷⁰ 1,950,000 x EUR 185.

⁷¹ see also digital assistance technology, which is becoming increasingly popular among consumers, e.g. Siri and Alexa

⁷² J Barnett and P Treleaven (2018), Algorithmic dispute resolution – the automation of professional dispute resolution using AI and blockchain technologies, <https://academic.oup.com/comjnl/article/61/3/399/4608879>

⁷³ https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13430-Consumer-protection-law-cross-border-enforcement/public-consultation_en

4.3. Coherence

This section assesses whether the ADR Directive is internally and externally coherent. In particular, we evaluate synergies, duplications and overlaps with the other interventions pursuing similar objectives, such as European consumer legislation and sectoral rules relevant for consumer redress. Several horizontal and sectoral interventions that pre-dated the ADR Directive contained provisions on out-of-court consumer redress, some of them were later amended. In view of the possible application of the ADR directive to a very large number of EU law regulating retail markets, it concentrates on the areas where most significant inconsistencies could exist.

4.3.1. *Is the Directive consistent with key redress principles in substantive consumer legislation?*

Main consumer law principles for remedies have been strengthened in the 2019 amendment⁷⁴ to Directive 2005/29/EC on Unfair Commercial Practices Directive (UCPD), new article 11a consumers harmed by unfair commercial practices, shall have access to proportionate and effective remedies, including compensation for damage suffered by the consumer. As the unfair commercial practices cover pre-contractual and also after sales stages, the limitation in the ADR Directive to disputes pertaining to a contract may have restrictive effects on which consumer rights are effectively considered by ADR entities.

Moreover, as the scope of the ADR directive only includes the contract where the consumer pays or undertakes to pay a fee, there may be a situation where a consumer and a professional have a legal relationship (such as accepting terms and conditions of an intermediary website), but the fees are paid by the trader or the consumer does not pay a price but provides personal data to the trader. The Consumer Rights Directive (CRD) has been amended with the new Article 3(1a) to ensure that its rules apply when the contract involves provision of consumer's data *in lieu* of payment.⁷⁵

Sector specific legislation, which provide some ADR provisions usually tend to have a wide scope covering the rights and obligations established in the sector specific instrument: Article 24(1) of the Directive 2008/48/EC (Consumer Credit Directive)⁷⁶ puts a specific obligation on the Member States to ensure that adequate and effective out-of-court dispute resolution procedures for the settlement of consumer disputes concerning credit agreements (and not only credit contract) are put in place, using existing bodies where appropriate. The Directive 2014/17/EU (Mortgage Credit Directive)⁷⁷ follows a similar approach,⁷⁸ but extends the scope to the disputes with the credit intermediaries and appointed representatives. Finally, Directive 2014/92/EU⁷⁹ (Payment Accounts Directive), while making specific reference to the ADR Directive, expressly mentions in the scope “pre-contractual disputes concerning rights and obligations established by the Payment Accounts Directive”⁸⁰. Directive (EU) 2019/944 (the Electricity Directive)⁸¹ clarifies the scope to rights and obligations established under this Directive.

The Telecommunication sector is however an exception to the trend. The original Article 34 of now repealed Directive 2002/22/EC (Universal Service Directive)⁸² required an option of out-of-court procedures for “unresolved disputes, involving consumers, relating to issues covered by this Directive”. Later amendments, and eventually the Directive (EU) 2018/1972 (Electronic Communications Code) limited the obligation to “performance of the contracts”.

⁷⁴ Directive (EU) 2019/2161 of the European Parliament and the Council DIRECTIVE (EU) 2019/2161 of 27 November 2019 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards the better enforcement and modernisation of Union consumer protection rules' <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1585324585932&uri=CELEX%3A02005L0029-20220528>

⁷⁵ See also Recitals 31-33 of the Directive (EU) 2019/2161

⁷⁶ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32008L0048>. On June 30, 2021, the European Commission published a proposal to revise Directive 2008/48/EC on credit agreements for consumers: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021PC0347>

⁷⁷ Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010; <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32014L0017>

⁷⁸ Here we may mention that the new CRD proposal includes intermediaries

⁷⁹ Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features; <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32014L0092>

⁸⁰ Recital 52, Article 24. The current stage of CRD proposal includes a similar Recital, but limits this to “credit agreements”

⁸¹ Directive (EU) 2019/944 of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU; <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L0944>

⁸² Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services; <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32002L0022>

It must be said that there are some other differences with the sectoral legislation. As the latter applies as “*lex specialis*”, these differences do not pose a coherence issue. For example, while the ADR Directive obliges the traders committed or obliged to use ADR to provide this information spontaneously,⁸³ on their websites and in terms and conditions, some other legislation, such as Package Travel Directive also requires this information to be included in the confirmation of the contract.

4.3.2. *Is the Directive internally coherent?*

The ADR Directive sets out requirements related to expertise, independence and impartiality of the ADR entities. Of those criteria, independence is crucial to build the trust of the parties, as confirmed by responses to the public consultation⁸⁴ and recent behavioural experiments.⁸⁵

However, due to their wording certain articles may create confusion as to how to ensure that entities ran by a trader or by a professional association are independent. Article 6(5) stipulates that ADR entities that make decision “by college” must be composed of an equal number of representatives of consumers’ interests and of representatives of traders’ interests. Meanwhile, Articles 6(3) and 4 refer to collegial ADR body (or collegial body nominating ADR representatives) that include representatives of consumer organisations, to counterbalance representatives of the traders or those employed or paid by professional associations.

The difference between the wording (consumer interests vs. consumer organisations) creates an impression that the notion of consumer organisations and representatives of consumers interests are differentiated. This has generated one of the complaints received by the Commission, and observations by BEUC on the lack of clarity in relation to the role of representatives of consumers associations in collegial ADR bodies.

4.3.3. *Is the approach to ADR models in EU sector specific legislation compatible with the minimum harmonisation principle of the ADR Directive?*

The ADR Directive is a minimum harmonisation directive which leaves it to the Member States to decide on the governance, funding model, mandatory participation and the nature of the outcomes. Sector specific legislation may however go a step further in prescribing how ADR models need to function in the sector in question, for example:

1. The Mortgage Directive requires Member States to ensure that participation in ADR is “not optional” for the financial providers, credit intermediaries or authorised representatives (recital 77);
2. The Electricity Directive stipulates that the participation of electricity undertakings in out-of-court dispute settlement mechanisms for household customers shall be mandatory unless the Member State demonstrates to the Commission that other mechanisms are equally effective;
3. In the field of passengers’ rights,⁸⁶ while the role of the National Enforcement Bodies (NEBs) is different from ADR, the NEBs may play a role in handling individual complaints and providing consumer compensation, if the national rules provide for it. According to the CJEU judgement in Case C-597/20⁸⁷, NEB, as an administrative body, may compel the trader to issue an individual compensation as long as both parties still have access to court.⁸⁸ Some NEBs are also “double-hatting” as ADR entities.

⁸³ See also CJEU C-380/19, where the court stated that providing ADR information only after the contract is signed is insufficient if the trader is already obliged and committed to the use of ADR – such information should be given before the consumer decides to engage with the trader; <https://curia.europa.eu/juris/liste.jsf?language=en&num=C-380/19>

⁸⁴ 48% respondents chose independence in response to “What encourage consumers and traders to call on an ADR entity to resolve a cross-border dispute (top 2 answer)

⁸⁵ ADR Behavioural study; summary available here: [Alternative dispute resolution for consumers \(europa.eu\)](https://ec.europa.eu/consumers/odr/alternative-dispute-resolution-for-consumers_en)

⁸⁶ Reference to all four legislative instruments.

⁸⁷ Case C-597/20; Polskie Linie Lotnicze ‘LOT’ S.A. v Budapest Főváros Kormányhivatala, <https://curia.europa.eu/juris/liste.jsf?lgrec=fr&td=%3BALL&language=en&num=C-597/20&jur=C>

⁸⁸ CJEU considered the objective of Regulation No 261/2004 to prevent “inconvenience” by the passenger, including inconvenience of bringing the procedure before the court, but it also took into account that the amount of compensation is known to the parties beforehand

These differences, however, do not pose a problem as the sectoral legislation is specific enough to ringfence the traders to be covered.

4.3.4. *Is the ADR Directive coherent with the recently adopted EU laws?*

The ADR Directive stipulates that collective redress and ADR are parallel processes and not mutually exclusive. Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on Representative Actions for the protection of the collective interests of consumers (RAD Directive)⁸⁹ introduces collective judicial redress and does not impact the ADR Directive as its logic and scope are different. ADR is, by definition, an out-of-court procedure while RAD focuses on actions before the courts and administrative authorities. Further, while the ADR Directive deals with any contractual disputes as long as one party is a trader and another one is a consumer who pays or undertakes to pay a fee, Article 2(1) of RAD limits the scope of Representative Action to infringements of the provisions of EU consumer law which are committed by traders and which harm or may harm the collective interests of consumers, or, for redress action, interests of the group of consumers.

Article 21 Digital Services Act (DSA)⁹⁰, prescribes the use of out of court dispute resolution when a user is not in agreement with platforms’:

- decisions whether or not to remove or disable access to or restrict visibility of the information;
- decisions whether or not to suspend or terminate the provision of the service, in whole or in part, to the recipients;
- decisions whether or not to suspend or terminate the recipients’ account;
- decisions whether or not to suspend, terminate or otherwise restrict the ability to monetise information provided by the recipients.

The scope of this provision is narrowly restricted to decisions made by platforms in relation to their appreciation of whether a content is illegal or in breach of the platforms’ terms and conditions. In practice, this consists mainly in the case of consumers when they post content that is illegal, such as racist or they sell products prohibited when acting outside of their professional activity (otherwise they would not be considered as consumers and therefore their relationship with the platform would be of a B2B natures).

While there is thus no conflict between this DSA article and the ADR directive the duplication of dispute resolution entities that may be created by the two legal frameworks is likely to raise questions on the national level, e.g. to what extent existing Consumer ADR bodies could be certified also as dispute resolution bodies under Article 21 DSA. The quality requirements established by the Consumer ADR Directive are sufficiently general to allow for the design of Consumer ADR bodies that at the same time comply with the characteristics and conditions established by Article 21 DSA.

However, it should be noted that Article 21 DSA appears to prescribe a very wide personal scope for disputes submitted to a dispute resolution entity certified under that article: According to Article 21(1) DSA, recipients of the platform provider’s service can submit their dispute to any dispute settlement body certified under that article. As the provision appears not to establish any territorial limitation to the residence of the recipient or the establishment of the platform provider or the dispute settlement body, it would appear that a dispute resolution body, once certified under Article 21 DSA, would have to accept disputes from any recipient of any online platform covered by Article 21 DSA.

4.3.5. *Conclusions*

The evaluation showed that the ADR Directive is not coherent with main EU consumer protection laws and sector specific legislation when it comes to the scope definition. This poses a risk of *de facto* scope limitation of the ADR processes to contractual disputes only. There is also an internal coherence issues in relation to the role of consumer associations in collegial dispute resolution bodies. On the other hand, the ADR Directive is coherent with two very important legislation adopted recently: the RAD and the DSA, while their interplay may however create practical problems and possible confusion on the ground.

⁸⁹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32020L1828>

⁹⁰ 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); <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32022R2065&qid=1666857835014>

4.4. Relevance

This section gives an overview of external factors which occurred since the adoption of the Directive and had unintended impacts or effects with respect to its objectives, whether positive or negative and which put into question the continued relevance of the Directive in view of today's consumer needs.

4.4.1. *To what extent are the scope and objectives of the ADR Directive still relevant?*

Emergence of online platforms/marketplaces

The Digital Markets Act⁹¹ and the Digital Services Act recognised the need to set new models to regulate the platform economy. Most large online platforms have their own dispute resolution systems which *de facto* are imposed on consumers and traders. Private (non-compliant to the ADR directive) ODR systems are taking up the market of dispute resolution by being cheaper, faster and easily accessible online. Such dispute resolution mechanisms (the new step in complaints-handling mechanisms) are not regulated under EU law and they may not pose issues as to their fairness as assessed in the Impact Assessment to which this evaluation is attached.

The extremely rapid development of online trade – including from non-EU traders, the market dominance of few platforms, the majority of publicity being now digital, the high prevalence of online unfair practices and the imposing of dispute resolution systems by large platforms mean that consumers are exposed to increased unfair practices and at the same time risk from being able to access a quality ADR procedure.

Increase of complaints with non-EU traders

The single market stimulates trade, as it makes the EU a more important trading partner at global level. It fuels growth and competition and creates new opportunities for businesses, giving them access to a domestic market of 447 million consumers. The number of complaints received by the ECC relating to non-EU traders fluctuated between 5-7 % between 2019-2021; only representing a small portion of the actual number of complaints relating to non-EU traders, as ECCs are not usually referred to for disputes against non-EU traders. A study⁹² by the Federation of German Consumer Organisations (Verbraucherzentrale Bundesverband e.V. – vzbv) and the individual consumer associations of Germany's federal states found that while consumers had a lot of confidence in online marketplaces, and appreciated the convenience on making purchases online, they were often confronted with unlawful practices, and left unable to enforce their rights, particularly as regards purchases from sellers based in non-EU countries. Results from the Market Monitoring survey 2020⁹³ that was conducted in September and October 2020 highlighted the following issues:

- problems with orders or purchases outside the EU were more frequent than with those purchased within the EU (41% compared with 23%);
- the most frequent complaints were problems with delivery (long delivery times, goods not delivered) and poor-quality goods;
- where problems arose with purchases made outside the EU, most of those affected contacted the merchant or shop directly (80%), but more than a third were unable to resolve the problem in this way.

As participation in ADR is voluntary in most cases for traders, it should not be a barrier for non-EU traders to participate voluntarily in ADR executed by EU ADR entities.

Increase of unfair commercial practices

The 2021 Consumer Conditions Survey shows that unfair commercial practices are prevalent, particularly as concerns consumers feeling pressured by persistent sales calls/messages urging them to buy something

⁹¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32022R1925>

⁹² https://www.vzbv.de/sites/default/files/downloads/2017/11/08/17-11-08_brochure-vzbv-beuc-lr3.pdf

⁹³ https://commission.europa.eu/strategy-and-policy/policies/consumers/consumer-protection-policy/evidence-based-consumer-policy/market-monitoring_en

or sign a contract (41% reported that they had experienced this). It also noted several problematic online advertising practices⁹⁴ / contractual practices, which included hidden adverts placed within search results (77% of consumers reported having experienced this) and consumer reviews that did not appear genuine (66% of consumers reported having experienced this). In terms of the social media use of online markets, Consumer Protection Cooperation (CPC) authorities further noted the following concerns⁹⁵:

- lack of transparency on the use of personal data (e.g. in the context of personalised advertising),
- aggressive practices to impose cookies,
- inefficient age verification mechanisms, putting children at risk;
- challenges by innovative marketing techniques of big market players in the social media and entertainment sector, such as neuro-marketing (using brain imaging to fine-tune advertising) and how this might affect vulnerable consumers, such as children.
- unfair persuasive techniques employed by online markets, such as false messages on scarcity, social proof, automated fake price discounts, and countdown timers urging consumers to rush through a purchase. Negative nudging practices, such as subscription traps or overly burdensome opt-out processes were also prevalent concerns.

In 2022, CPC authorities carried out a sweep on dark patterns.⁹⁶ Under the coordination of the Commission, authorities of 23 Member States, Norway and Iceland checked 399 websites and applications of retail sellers active in the sales of products for their own account. 148 out of 399 webshops screened included at least one dark pattern out of the following:

- 42 websites used fake countdown timers: dynamic indicator of a deadline urging and pressuring clients to purchase a product. The timer is however fake when it resets after the expiry with the same offer still valid or it expires but the offer it claimed remains valid even after expiration;
- 54 websites directed consumers towards certain choices - from subscriptions to more expensive products or delivery options - either through their visual design or choice of language False hierarchy: design of interfaces in a way that directs consumers towards certain choices, either through visual design or language used;
- 70 websites had hidden information on a product or service by using very small fonts, non-contrasting colours or placing information in a less visible place.

Around 4,000 Spanish traders adhere to an ADR scheme⁹⁷ which handles disputes stemming from unfair/misleading advertising. Disputes are usually resolved within 15 days and the outcome is binding on traders.

The increased importance of digital markets also in offline transactions (in view of the dominance of digital advertising) means that the ADR Directive scope is drafted in a way which undermines its relevance because of the explicit reference to contractual disputes.

4.4.2. *How has the ADR Directive responded to consumer needs in crises situations?*

Impact of COVID-19 on ADR

The current ADR Directive stood to the test during the COVID-19. The overall increase of 15% of ADR disputes across the EU was handled well by all ADR entities especially by those entities which had the right infrastructure, despite some difficulties in mail delivery, some teething problems to switch to digital applications for virtual hearings, and skeleton staff workforce in the peak of the pandemic due to more sick leave requests. COVID-19 raised the importance and contributed to the growth of ODR, as the

⁹⁴ The European Advertising Standards Alliance (EASA) held that advertising self-regulatory organisations (SROs) in Europe enforce codes of conducts to ensure responsible advertising. The complaint-handling system enables EU consumers to complain to the SROs in their country and in their own language. On average, SROs handled 60,000 complaints per year and almost 62,000 complaints in 2021. The complaint-handling is free of charge to consumers with the vast majority being resolved in one month.

⁹⁵ https://ec.europa.eu/info/sites/default/files/swd_2022_108_f1_staff_working_paper_en_v3_p1_1903309.pdf

⁹⁶ https://commission.europa.eu/live-work-travel-eu/consumer-rights-and-complaints/enforcement-consumer-protection/sweeps_en#ref-2022--sweep-on-dark-patterns

⁹⁷ <https://www.autocontrol.es/autocontrol-eng/quienes-somos-eng/#:~:text=AUTOCONTROL%20is%20the%20independent%20advertising,%2C%20legal%2C%20honest%20and%20loyal.>

theoretical and practical aspects of ADR were found to work well in the online environment.⁹⁸ Importantly, ADR providers could rely on methods that had already been tested, such as virtual and online platforms to conduct ADR sessions (e.g. Zoom, Microsoft Teams, and others).

In the years 2020-2021, FSPO received 875 complaints where the complainant introduced COVID-19 as an element of their complaint and by the end of 2021, 682 of these complaints had been closed.⁹⁹

The main problem was to comply with the 90-day timeframe to decide ADR disputes. In France, 40 % of the disputes handled by the Ombudsman of the Authority for the Regulation of Online Gaming (ARJEL) exceeded the 90-day window; the Ombudsman in the Tourism and Travel (MTV) reported that in over 40% the 90-day window had to be exceeded given the heavy workload. According to a mini survey of the ADR entities conducted by the Commission in the first week of May 2020, it was concluded that there was an increase of 33% travel ADR disputes between January and April 2020 in comparison to the same period in 2019¹⁰⁰.

The European Consumer Centres received a record number of consumer queries (170,000 requests, an increase of 44% compared to the same period in 2019) throughout March and April 2020 with the top 3 sectors being air passenger rights, accommodation services and package travel.¹⁰¹ Many transport and travel service providers issued vouchers instead of cash reimbursement for cancelled trips due to COVID-19. The Commission preserved the existing consumer rights through Recommendation (EU) 2020/648 on vouchers offered to passengers and travellers an alternative to reimbursement for cancelled package travel and transport services in the context of the COVID-19 pandemic.¹⁰² Under the Package Travel Directive, if a package trip is cancelled due to “unavoidable and extraordinary circumstances”, travellers have the right to get a full refund of any payments made for the package, without undue delay and in any event within 14 days after termination of the contract. In this context, the organiser may offer reimbursement in the form of a voucher to the traveller. However, this possibility does not deprive the travellers of their right to reimbursement in money. Reimbursement by means of a voucher could only be possible if the passenger agrees. The Commission recommended that the vouchers should be:

- covered by insolvency protection set up at national level;
- refundable at the latest 12 months following the issuance of the voucher upon request of the traveller, and automatically reimbursed after its expiry;
- flexible on the range of services e.g. booking the same route under the same conditions as the original booking or package;
- flexible on the operator with whom the new booking can be done;
- transferable to other passenger without additional cost.

To assist the EU travellers in view of the COVID-19 outbreak, the Commission published useful information, ranging from a Practical Guide for transport operators and travellers¹⁰³ to follow during all the stages of the journey, information related to border restrictions and consumer rights including on vouchers and reimbursement options to consumers¹⁰⁴. On 10 June 2020, DG JUST and DG MOVE had co-organised an online meeting for all travel ADR entities registered on the ODR Platform to give further clarification on the interpretation of the Commission Recommendation on vouchers¹⁰⁵.

An increase in the use of ADR was noted for example in France, Italy and Spain, mainly due to deliberate actions by the Member States to facilitate its application:

⁹⁸ <https://www.jdsupra.com/legalnews/reflections-about-the-pandemic-adr-and-3910334/>

⁹⁹ FSPO Annual Report 2021; <https://www.fspo.ie/publications/annual-report.asp>

¹⁰⁰ 122 ADR entities out of the 460 ADR entities notified to the Commission responded to the survey. Half of the 58 respondent ADR entities which handle travel disputes reported an overall increase of cases across the travel industry (33% more than in 2019).

¹⁰¹ https://ec.europa.eu/info/live-work-travel-eu/consumers/resolve-your-consumer-complaint/european-consumer-centres-network-ecc-net/ecc-net-and-covid-19_en

¹⁰² https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2020.151.01.0010.01.ENG&toc=OJ.L:2020:151:TOC

¹⁰³ https://ec.europa.eu/commission/presscorner/detail/en/FS_20_850

¹⁰⁴ https://ec.europa.eu/commission/presscorner/detail/en/qanda_20_870

¹⁰⁵ Commission Recommendation (EU) 2020/648 of 13 May 2020 on vouchers offered to passengers and travellers as an alternative to reimbursement for cancelled package travel and transport services in the context of the COVID-19 pandemic; <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32020H0648>

in France, Decree No 2019-1333 of 11 December 2019 introduced an obligation to resort to conventional mediation or conciliation prior to launching proceedings before the judicial court that do not exceed an amount of EUR 5 000¹⁰⁶;

in Italy, mandatory mediation was extended to cases concerning failure to comply with contractual terms (or delay in compliance) when the conduct of the defaulting debtor was caused by the duty to abide by the rules laid down with a view to containing the spread of COVID-19¹⁰⁷;

in Spain, the number of complaints submitted increased after the ADR competent authority published an explanatory guide for the online filing of complaints to enable investors to continue exercising their rights, explaining the submission process to investors and how to access the complaint after it has been submitted.

The increase of ADR disputes also emerged due to disruptions in parties being able to perform their contractual obligations, such as late payments, difficulties with the production of goods due to a lack of supply or transport, labour shortages, the impossibility to deliver goods, and closure of facilities.

The impact of COVID-19 on ADR triggered a reflection on whether national ADR contingency plans are necessary for ADR entities to be well-equipped in case of an avalanche of disputes.

Impact of energy crisis on ADR

The energy crisis led to a significant increase of disputes¹⁰⁸ related to sudden price hike of bills which are putting vulnerable consumers at risk and imposed changes to contractual conditions by energy providers. For instance, in Belgium energy disputes went up from 9,000 disputes in 2021 to over 20,000 disputes in 2022. In an online meeting hosted by the Commission on 19 November 2022 with energy ADR entities, it became evident the need to look into safeguards for vulnerable consumers in addition to the specific legislation which already caters for their needs.

In Austria, the special needs of each consumer are taken into account in each individual case.

Netherlands reported that in urgent energy, water, and childcare-related disputes (e.g., impending shutdown of energy/water supply), as well as in childcare-related disputes fast-track procedure is available to consumers.

In Czechia, every ADR entity has professional and educated employees who are able to communicate and deal with vulnerable consumers.

Results of a survey published in November 2022¹⁰⁹ by the Commission confirm that almost half of European consumers (48%) have concerns about paying their bills in the following six months. It also shows that a large majority of them (71%) have changed habits to save energy at home. Cooperation at national level is highly recommended in certain circumstances. There is a need for a more systematic approach to vulnerable groups. Minimum requirements for offline support, as well as other accessibility checks (such as a dedicated helpline, training obligations for ADR staff on how to provide ADR to vulnerable consumers, the publication of specific policies for vulnerable consumers, differentiating the types of vulnerability as part of wider institutionalised exchange and the obligation to have specific procedures for vulnerable groups¹¹⁰), but also the exchange of best practices could support this. Thresholds making it clear what a ‘nominal fee’ to ensure that fees charged to consumers do not form a barrier to access. This is for example the case with the Cyprus Center for ADR, which includes six different ranges of purchased goods/services with different fees for mediation and conciliation¹¹¹.

¹⁰⁶ <https://thelawreviews.co.uk/title/the-dispute-resolution-review/france>

¹⁰⁷ https://ajee-journal.com/upload/attaches/att_1599503458.pdf

¹⁰⁸ BE registered 9,000 disputes in 2021 to over 20,000 disputes in 2022

¹⁰⁹ The results of the survey can be found here

¹¹⁰ As recommended by BEUC, in the statement that the Commission should: “Adopt specific quality requirements to address the needs of vulnerable consumers” BEUC, 2022, Alternative Dispute Resolution for consumers: Time to move up a gear, available at beuc-x-2022-062_adr_position_paper.pdf

¹¹¹ See ADR Cyprus Center, Mediation, available at: <https://adrcyprus.com/en/mediation/>, and Conciliation, available at: <https://adrcyprus.com/en/conciliation/>

The French consumer organisation CLCV has organised joint online workshops with the French Energy Ombudsman to present the services proposed by the Ombudsman to consumers and the public at large in the context of the energy crisis.¹¹²

In view of the above scenarios which led to significant increase of ADR cases, one may consider that **collective ADR is insufficiently promoted in the Directive**. Collective ADR is only mentioned in Recital 27; only six Member States (AT, ES, HR, RO, SE, SI) have collective ADR in the national law, although in practice no such claims occurred. Collective ADR can be efficient for all parties:

- for the ADR entity that has economies of scale when dealing with one case or one group of cases, instead of several disparate ones,
- for the trader who has less admin to deal with,
- and for the consumers who may not have all need to provide extensive supporting evidence.

As it is still considered as a novelty, more investment is needed at EU level to increase awareness-raising among consumers and traders and technical knowledge about how it works in practice.¹¹³

In Sweden, the Consumer Ombudsman may bring a collective action and is based on opt-out approach. Although other Member States may not have included specific provisions on collective ADR, it does not mean that the law prohibits it or that it is not used in practice. In Romania, similar to court litigation, ADR cases cannot be grouped against the applicant's will.

In Malta, the Maltese Office of the Financial Arbiter managed to group 400 complaints through a single submission as their cases involved the same property fund¹¹⁴.

So-called group claims can be handled by ADR only in eight Member States out of the surveyed 29 (AT, EE, ES, FI, HR, LU, SE, SI). For example, in Spain, there is an administrative practice of ADR entities to gather cases that are based on the same grounds and circumstances and that are solved by one resolution.

In addition, in three Member States, although grouped claims are not explicitly considered in the national law, ADR entities have grouped claims in practice (FR, IS, NL).¹¹⁵

In Netherlands, similar cases may be processed on the same day (even though they would not be bundled into one collective claim or be represented by one spokesperson). When processing a mass problem, the ADR board may select 1-3 representative individual cases out of many and render a binding advice in these "test cases," notifying the other parties their case is pending until the test cases have been decided. The outcome of the test cases is then shared as indicative of the pending cases, and these parties are invited to settle their cases accordingly.

Impact of the withdrawal of the United Kingdom from the EU on ADR

As of the end of the transition period i.e. 31 December 2020, the ADR Directive stopped applying to the UK traders and consumers. All listed ADR entities established in the UK were no longer incentivised to participate in ADR procedures launched in other EU countries; hence EU consumers may no longer have the right to ADR to resolve cross-border disputes against UK traders; unless the ADR entities agree to handle their cases. UK-based ADR entity European Car Rental Conciliation Service (ECRS)¹¹⁶ was established in UK in 2009 to help EU consumers resolve complaints concerning cross-border vehicle rentals. In fact, major car rental companies are registered to this ADR scheme. This entity being based in

¹¹² <https://www.clcv.org/energies/gaz-electricite-webinaire-avec-le-mediateur-national-de-lenergie>

¹¹³ See discussion paper on collective ADR and report of the cross-border ADR roundtable (June 2022); https://commission.europa.eu/live-work-travel-eu/consumer-rights-and-complaints/resolve-your-consumer-complaint/alternative-dispute-resolution-consumers_en#cross-border-adr-roundtable.

¹¹⁴ Whilst the financial arbiter found in favour of the complainants, unusually, this was overturned at Court of Appeal.

¹¹⁵ Information on FR and IS is based on experiences shared by ADR entities during the cross-border ADR event in June 2022.

¹¹⁶ <https://www.ecrcs.com/>

the UK still resolves disputes for EU consumers however it is no longer required to report to the Commission on the status of its ADR activities; nor does it have to comply with the quality requirements listed in the ADR Directive.

Many EU consumers traditionally have a habit of buying from UK (mostly from Cyprus, Ireland and Malta) due to proximity or historical ties to the UK, UK and EU consumer law are still similar but may differ as respective laws evolve over time; hence the impact is yet to be seen. The Commission published information on the impact of Brexit on consumer protection in a dedicated Preparedness Notice¹¹⁷ to ensure that EU consumers have clear information on their rights, including the lack of access to ADR.

Conclusion

The development of digital markets has led consumers to be faced with more problems while their capacity to use quality ADR bodies is limited by the existence of platforms dispute resolution systems. Furthermore, the scope description of the ADR Directive may be too restrictive in terms of which disputes are in the scope. The restriction of the scope to traders established in the EU is also depriving many consumers from accessing fair redress systems. In crises situations, e.g. COVID-19 and the recent energy crisis, ADR procedures proved to be important mechanisms to deal with the increased number of consumer issues that the crises generated. These crises therefore do not question the relevance of the Directive but the question is whether certain mechanisms should be strengthened notably to allow ADR entities to deal with more cases at the same time.

4.5. EU added value

4.5.1. *Could the objectives of the ADR Directive have been achieved sufficiently by the Member States acting alone?*

Clearly, had the ADR Directive not been adopted, some Member States would continue not having an ADR framework to resolve consumer disputes or at least not across all market sectors and/or in compliance with the quality requirements. The 2011 Impact Assessment provides a bird's eye view of the EU ADR framework at that time:

| ADR Coverage | Member States |
|----------------------|---|
| No ADR | Slovenia, Slovakia |
| Partial ADR Coverage | Austria, Belgium, Bulgaria, Cyprus, Czechia, France, Germany, Hungary, Ireland, Italy, Luxembourg, Poland, Portugal, Romania, Spain, UK |
| Full Coverage | Denmark, Estonia, Finland, Greece, Latvia, Lithuania, Malta, Netherlands, Sweden |

In total, there were 492 notified ADR entities to the Commission in 2011; across the EU; with Germany alone having notified 203 ADR entities.

The accreditation of ADR entities in line with the quality requirements introduced by the ADR Directive has improved the standards of ADR across the single market. Some pre-existing ADR schemes had to make structural changes to strengthen their autonomy vis-à-vis trader organisations to ensure a high level of trust among consumers and traders. In France, the national competent authority deregistered several ADR entities in the past because of their lack of compliance with the quality requirements. Consumers do not always trust trader-funded ADR entities. Conversely, traders perceive ADR entities as consumer agencies hence it is important that there are EU-wide measures aimed at improving trust of both parties in ADR entities, such as imposing equal representation of traders and consumers within the board of ADR entities and stronger supervisory role of competent public authorities towards ADR entities.

¹¹⁷ https://commission.europa.eu/system/files/2018-09/consumer_protection_and_passenger_rights_en.pdf

Due to the minimum harmonisation approach, Member States still have the liberty to extend the scope of the ADR Directive i.e. to cover disputes stemming from non-contractual obligations e.g. related to unfair advertising, pre-contractual obligations, civil disputes by consumers (e.g. injury in a shop), B2C disputes to cover disputes related to returned empty parcels, defamatory comments or fake reviews tarnishing the reputation of traders, etc. However as challenges are the same across the EU, only a EU level approach can bring value added in the perspective of a single market where consumers and traders are increasingly active cross border.

Better quality of consumer ADR across the EU

Following the adoption of the ADR Directive, Member States notified over 400 ADR entities to the Commission which are currently listed on the Commission website¹¹⁸. Consumers have easy access to the accredited ADR entities in their Member State and have clear information on the competence, costs and procedure of each ADR entity in their native language. Consumers are confident that such ADR entities have been accredited by competent authorities and are in compliance with the quality criteria found in the ADR Directive. This is important in case they have to refer their dispute to an ADR entity established in another Member State and they are not familiar with the ADR culture and procedures implemented there. According to the Open Public Consultation, 49% of the respondents claimed that clear quality criteria boosts ADR uptake in cross-border ADR. Stakeholders suggest that some clarifications are needed to ensure even quality e.g. to ensure that a balance is sought between the human element and fairness when using digital tools, to clarify the parallel approach between ADR and court litigation and to guarantee independence for trader-led ADR entities. It is not crystal clear that the information held by ADR competent authorities about the ADR entities is sufficient to enable a proper assessment. Moreover, not in all Member States consumers have recourse to a specific complaint forum to report their concerns about the functioning of the ADR entities in their Member State.

More operational capacity to ADR entities

Since 2018, the Commission has been awarding grants to ADR entities through a call for proposals. It earmarked EUR 1 million per year in 2018, 2019 and 2021 and EUR 500,000 in 2020¹¹⁹ from the Consumer Programme 2014-2020¹²⁰ and EUR 1 million in 2022 from the Single Market Programme¹²¹. More than 80 ADR entities notified to the Commission have benefitted from these low-value grants (i.e. max EUR 60,000) to:

- raise consumers and traders awareness on ADR systems,
- invest more in digitalisation to improve communication among parties, case-handling and consistency of ADR outcomes,
- facilitate the handling of cross-border ADR disputes, and
- improve access to ADR (e.g. improved effectiveness of national ADR infrastructure and safeguards to vulnerable consumers).

Despite online or physical info-sessions organised by the European Innovation Council and SMEs Executive Agency (EISMEA), the grants are never fully disbursed. Although the application has been simplified to a limited extent as there are some parts which cannot be adapted from a technical perspective, some ADR entities do not have sufficient resources to design and implement the project or the financial resources to cover the 50% co-financing rate. For 2022, the Commission announced a substantially higher co-financing rate of 90%, proving its priority to boost consumer confidence in ADR which is crucial for consumers highly affected by rising inflation and to ensure that even ADR entities with limited financial resources would be able to benefit from this grant. Annex IV.D shows the list of ADR grant awardees. In

¹¹⁸ <https://ec.europa.eu/consumers/odr/main/?event=main.adr.show2>

¹¹⁹ Budget allocation is determined every year in view of all policy priorities of the DG.

¹²⁰ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014R0254>

¹²¹ [https://commission.europa.eu/funding-tenders/find-funding/eu-funding-programmes/single-market-programme/overview_en#:~:text=The%20Single%20Market%20Programme%20\(SMP,governance%20of%20the%20single%20market.](https://commission.europa.eu/funding-tenders/find-funding/eu-funding-programmes/single-market-programme/overview_en#:~:text=The%20Single%20Market%20Programme%20(SMP,governance%20of%20the%20single%20market.)

2023, the Commission allocated EUR 1 million again for ADR grants and extended the application to grants over EUR 60,000.

Since 2018, the Commission earmarked EUR 5.5 million in grants for ADR entities to improve their infrastructure, awareness-raising, capacity building, etc. Such an amount offered at EU level is clearly an advantage for ADR entities where domestic public funding is limited. ADR grants allow for dynamic and innovative ADR entities to modernise wherever they are located in the EU.

EU-wide networking

Without EU intervention, it is highly unlikely that Member States would have taken an initiative to developing their ADR frameworks fit for cross-border disputes. EU ADR networks like the Travel net, FIN-Net and Energy Mediators Group (EEMG) have contributed to cross-border ADR cooperation and sharing of best practices. The Commission organised 2 ADR Assemblies (in 2018 and 2021¹²²) and other workshops¹²³ to facilitate the exchange of best practices among EU qualified ADR entities, big traders and stepped up its communication through the creation of an online platform for the ADR competent authorities to ensure consistent and efficient communication.¹²⁴ FIN-Net meetings discuss the approach to applicable law in cross-border ADR, the benefits of digital tools and governance issues, amongst other topics. In February 2023, FISMA contacted the ADR Competent Authorities of 4 Member States (BG, CY, LV, RO) to encourage notified financial ADRs in these Member States to join FIN-Net. The Commission participated in national ADR events to get more insight on the implementation of ADR on the ground.¹²⁵

4.5.1. Was there improved legal certainty?

Uniform interpretation by the Court of Justice of the EU (CJEU) on Consumer ADR

As outlined in Recital 60, the Union adopted the Directive in line with the principles of subsidiarity and proportionality. The minimum harmonisation may not have decreased the pre-existing fragmentation of ADR frameworks in Member States while, after adoption of the directive, certain Members States may have gone beyond the regulated minimum standards. The CJEU has in at least 3 cases given clarifications on the interpretation of the ADR Directive or the previous Commission Recommendation 98/257/EC of 30 March 1998; requiring national courts to interpret the national ADR legislation in the light of the wording and the purpose of the ADR Directive (*effet utile*).

In the *Alassini*¹²⁶ case, the CJEU was receptive towards national laws that impose a number of conditions are first met to guarantee a party has effective access to Courts should the ADR process fail to settle the dispute. The Court clarified that national legislation that prescribes recourse to a mediation procedure as a condition for the admissibility of legal proceedings in front of a civil court is compatible with the Directive as long as that ADR procedure does not result in a decision which is binding on the parties, that it does not cause a substantial delay for the purposes of bringing legal proceedings, that it suspends the period for the time-barring of claims and that it does not give rise to costs — or gives rise to very low costs — for the parties, and only if electronic means is not the only means by which the settlement procedure may be accessed and interim measures are possible in exceptional cases where the urgency of the situation so requires.

¹²² One of the sessions at the ADR Assembly 2021 was an ADR Fair in which 6 ADR entities shared their projects which they had financed through an ADR grant: https://ec.europa.eu/info/live-work-travel-eu/consumer-rights-and-complaints/resolve-your-consumer-complaint/alternative-dispute-resolution-consumers_en#adr-assembly-2021-materials

¹²³ E.g. a workshop at the Consumer Summit 2022 on Digital tools supporting consumers to enforce their rights: <https://european-consumer-summit-2022.b2match.io/page-3921> or the cross-border ADR roundtable in June 2022: https://ec.europa.eu/info/live-work-travel-eu/consumer-rights-and-complaints/resolve-your-consumer-complaint/alternative-dispute-resolution-consumers_en#cross-border-adr-roundtable

¹²⁴ The Stakeholder Consultation Annex gives a clear overview of all EU-wide ADR actions (meetings, workshops, consultation, etc) over the past 2-3 years.

¹²⁵ See Stakeholders Consultation Annex.

¹²⁶ Joined Cases C-317/08, C-318/08, C-319/08 and C-320/08, Rosalba Alassini and Others v. Telecom Italia SpA and Others, 18 March 2010; <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62008CJ0317&from=LV>

In Case C-75/16¹²⁷, the CJEU confirmed that the voluntary nature of ADR is compatible with any form of compulsory mediation, as long as the parties are not prevented from exercising their right of access to courts.

In Case C-380/19¹²⁸, the CJEU ruled on companies' obligations to provide information on ADR; according to Article 13 ADR Directive in light of Article 6(1)(t) of the Consumer Rights Directive. The CJEU concluded that businesses have the obligation to inform consumers about ADR proceedings not only on their websites but also in the general terms and conditions of their contracts. It in particular ruled that the information on the ADR mechanisms need to be shown prior to signing a contract.

Relationship between national Courts and ADR processes is divergent across the EU

A 2018 study by the European Law Institute and the European Network of Councils for the Judiciary¹²⁹ depicts that there is patchwork on how ADR and Court systems work together; which may undermine the trust and confidence in such mechanisms and their ability to delivery cost-effective, timely and fair dispute resolution across Member States' borders. In Italy, ADR is mandatory before initiating a court procedure. There are other States where the penalties imposed by the courts for failing to participate in an ADR make such participation effectively mandatory.

The study stressed that the lack of links make it difficult for consumers to choose the best solution to resolve a dispute, notably because:

- there is limited availability of user-friendly information (FAQs) to parties of the ADR process and how it relates to the Court litigation; also addressing the principle of confidentiality and the duty to participate in ADR in good faith, how their rights might be affected by the conduct in the ADR process;
- it is difficult to judge from the outset the quality and independence of the ADR process and its suitability to the particular dispute and to the parties e.g. whether a dispute is likely to raise a question of law that might be more appropriate to be determined by a Court;
- low training of judges on ADR, limited sharing of best practices and no mapping of different models.

As ADR has been developing in different models at national level, so has justice systems, there has been no parallel evolution between Court systems and ADR across the EU. The Justice Scoreboard, for example, highlights that Court timeframes and fees also vary to a large extent.¹³⁰

Conclusion

The ADR Directive has left a positive impact on the single market because it ensured access to quality out-of-court dispute resolution to all EU consumers, irrespective of their country of residence. For some Member States without ADR culture, the transposition of the Directive meant a new effective consumer rights to access high quality ADR. The minimum harmonisation approach has been welcomed and it has been strongly recommended by stakeholders to be maintained. ADR entities benefitted from EU-level actions which offered them a platform for exchange of best practices and financial assistance to improve their infrastructure, capacity building and ADR awareness. The Court of Justice gave further clarity on some provisions in the ADR Directive to ensure legal certainty. One issue however which is not regulated in the Directive is the conditions to access judicial proceedings that differ across Member States where having pursued an ADR may be a compulsory requirement.

¹²⁷ Case C-75/16, Livio Menini and Maria Antonia Rampanelli v. Banco Popolare Società Cooperativa, 14 June 2017; <https://curia.europa.eu/juris/document/document.jsf?text=&docid=191706&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=2097920>

¹²⁸ Case C-380/19 Bundesverband der Verbraucherzentralen und Verbraucherverbände — Verbraucherzentrale Bundesverband eV v Deutsche Apotheker- und Ärztebank eG, 25 June 2020; <https://curia.europa.eu/juris/document/document.jsf?text=&docid=227724&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=8658222>.

¹²⁹ The Relationship between Formal and Informal Justice: the Courts and Alternative Dispute Resolution; https://www.europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Publications/ADR_Statement.pdf

¹³⁰ See factsheet: https://commission.europa.eu/system/files/2022-05/2022_eu_justice_scoreboard_factsheet.pdf

5. WHAT ARE THE CONCLUSIONS AND LESSONS LEARNED?

5.1. Six main lessons from the evaluation of the ADR legislation

Below are the main lessons which derive from this evaluation report:

- 1. The ADR Directive has been generally effectively transposed across the EU, it has brought a clear improvement to the situation of consumers in providing access to all EU consumers to quality ADR bodies in all areas of retail markets.**
- 2. The scope of the ADR Directive is too narrowly defined especially when it comes to take into account all disputes arising from digital markets, disputes relating the wider scope of consumer protection legislation and to the increasing role of 3rd country traders.**
- 3. The minimum harmonisation approach in the current ADR Directive has proven to be an asset for Member States that could design systems fit to their economic fabric and pre-existing dispute handling systems. However, the main issue with this approach is related to the different requirements across Member States (e.g. making ADR obligatory before accessing judicial proceedings in certain EU countries), which hamper consumers' rights in cross-border cases, along with accessibility barriers.**
- 4. The objective of the Directive to ensure access to ADR is however only partially attained due to practical problems such as the lack of awareness of traders and consumers, the complexity of ADR processes which are reflected in the still low uptake of ADR in certain Member States or economic sectors.**
- 5. The continued relevance of the ADR Directive is questioned by the rapid and uncontrolled digitalisation of ADR processes and the *de facto* imposition of Private Online Dispute Resolution systems by large online marketplaces.**
- 6. Cross-border ADR is nearly non-existent due to complex procedures and costs and needs for clarification on issues such as the applicable consumer law.**

5.2. Conclusion

Overall, the ADR Directive has proven to be a successful redress mechanism for EU consumers to resolve their disputes - an improved situation for consumers compared to pre-ADR directive times. The objectives of the Directive are however only partially achieved for a number of issues related to a narrowly defined scope, the complexity of procedures and some internal definition inconsistencies, the limited feasibility for domestic ADR bodies to act on cross border disputes, etc. In addition, the recent development in digital markets are clearly questioning its continued relevance since many of disputes related to online transaction may either be considered out of scope by ADR bodies, or are never escalated to a quality ADR body due to the growing importance of private Online Dispute Resolution systems provided by market places.

The Commission has committed itself in the Work Programme 2023¹³¹ to propose some legislative amendments to the current legislation to improve the ADR framework to better protect consumers from digital threats. The revised ADR Directive will aim at broadening access to fair, cost-effective and user-friendly tools to solve ADR claims, notably cross-border disputes by providing more assistance and information to consumers on the procedure and ensuring that costs remain proportionate. The revision will also take into account the increasing importance of digital markets which require fast and efficient

¹³¹ https://commission.europa.eu/strategy-documents/commission-work-programme/commission-work-programme-2023_en

mechanisms but also fairness and impartiality and the lessons learned above. The drivers, problems, objectives and options proposed are discussed in the main body of the impact assessment.

ANNEX I: PROCEDURAL INFORMATION

1. LEAD DG, DECIDE PLANNING/CWP REFERENCES

Lead DG: DG JUST

Decide Planning: PLAN/2022/1533

2. ORGANISATION AND TIMING

The evaluation of the ADR Directive and ODR Regulation was coordinated by an Inter-Service Steering Group, which was established to provide feedback on the back-to-back evaluation and impact assessment process, with representatives from:

- DG Communication Networks, Content and Technology (CNECT)
- DG Competition (COMP)
- DG Energy (ENER)
- DG Environment (ENV)
- DG Financial Stability, Financial Services and Capital Markets Union (FISMA)
- DG Internal Market, Industry, Entrepreneurship and SMEs (GROW)
- DG Mobility and Transport (MOVE)
- DG Health and Food Safety (SANTE)
- Secretariat General (SG)
- Service Juridique (SJ)

The Inter-Service Steering Group met 3 times, on 26 August 2022 to discuss the draft Call for Evidence; on 26 January 2023 to discuss the policy options the Commission considered to be included in its proposal to revise the ADR Directive and on 20 March 2023 to receive comments on the evaluation and the impact assessment reports which were circulated before. Between meetings, the members of the Group were invited to submit further input in writing or to call for bilateral meetings with JUST for further clarifications.

The data collection study which supported the evaluation of the ADR Directive and ODR Regulation, executed by Tetra Tech International Development Sp. z o.o. (Tetra Tech, Lead), in association with the Centre for Strategy and Evaluation Services (Europe) Limited (CSES) and Valdani Vicari & Associati Brussels SPRL, took place between January and October 2022. The consultant also participated in 3 meetings with stakeholders: on 8 March and 29 August with the ADR competent authorities and on 21 June 2022 at the cross-border ADR roundtable.

3. EXCEPTIONS TO THE BETTER REGULATION GUIDELINES

The Better Regulation Guidelines and Toolbox were followed without any exceptions.

4. CONSULTATION OF THE RSB (IF APPLICABLE)

5. EVIDENCE, SOURCES AND QUALITY

The evidence findings of the external support study fed into the analysis of this evaluation Staff Working Document. The consultant used the data of the Open Public Consultation which the Commission held in 2022 in its analysis. During the support study, the consultant used a mix of approaches including an evaluation matrix, desk research, interviews, a targeted consultation and case studies.

ANNEX II: METHODS AND ANALYTICAL MODELS

To support this evaluation, an external contractor carried out a Data Collection Study between January and October 2022. The data was based on:

- a) The analysis of the national ADR reports filled in by the ADR Competent Authorities;
- b) National research
- c) EU level Desk research;
- d) ADR behavioural study;
- e) Interviews;
- f) 2 Open Public Consultations;

National ADR Reports

DG JUST worked on a Questionnaire addressed to the ADR Competent Authorities to facilitate the process of the national ADR report which the authorities are to submit every 4 years in accordance with Article 20(6) ADR Directive. DG JUST held a meeting with ADR Competent Authorities to finalise the questionnaire and to give an update of the process on 8 March 2022. The below questionnaire was distributed on the WIKI platform on 18 March 2022 to be filled in through the EU survey by 15 April 2022 with a final formal deadline of 10 July 2022 in English or in another EU language. Throughout this period, the study team monitored the response rates on a regular basis and several reminders were sent to the ADR competent authorities to increase the response rate. By 15 April only 10 survey responses were received (BG, CZ, ES, FR, HR, LT, LV, PL, SE, SK) and until 10 July, 22 Member States had responded to the survey (IE, DK, FI, SI, AT, NL, DE, PL, NO, HU, IT, PT, EL, ES, LT, FR, BG, SK, HR, LV, CZ, SE). DG JUST sent reminders to the 8 Member States for which a survey response was missing¹³², and by the 15 July 2022, 26 Member States had responded. 29 national ADR reports were received, all except for: Liechtenstein¹³³. The contractor organised follow up interviews to all national ADR reports.

National research

The national research was launched on 11 April 2022 and the team was made of a national researcher from each Member State, Norway and Iceland. After the review by DG JUST of the 1st Interim Report (containing the findings from 10 Member States), the interview guides for the survey follow up interview were adjusted to include several additional questions of interest to DG JUST.

In several countries, national researchers faced lack of cooperation on the side of the national authorities leading to delays in completing the national research reports (e.g. Cyprus, Greece, Luxembourg, Malta). DG JUST followed up with these authorities.

The national research has been completed for all Member States, but the second survey follow up interviews did not take place with all ADR authorities (BE, EL, LI, SI).

National Report on Alternative Dispute Resolution (ADR)

The European Commission is proposing this template to assist the competent authorities in the Member States in drawing up their national application report

¹³² BE, EE, CY, IS, LI, LU, MT, RO

¹³³ The LI competent authority did not fill in the survey questionnaire but provided information through an interview.

pursuant to Article 20(6) of Directive 2013/11/EU on alternative dispute resolution for consumer disputes.

This template is using the tool “EU survey”, that will facilitate the collection of national reports in a comparable manner. We kindly ask national authorities to complete their report in EN or in their native language by 15 April 2022.

The EU survey can generate a pdf or excel report that can be used for national purposes. This template is structured in three parts:

Part I: ADR procedure in your Member State

Part II: Activities of ADR entities

Part III: Best practices, shortcomings & recommendations

The template will need to be completed by the ADR competent authority designated as the single point of contact in your Member State. In order to complete Part II, information will need to be collected from all competent authorities in your Member State (if multiple authorities exist in your Member State).

PART I: ADR PROCEDURE IN YOUR MEMBER STATE

Section 1.1: Introduction

1. Your authority's name

2.

Member State where your authority is located

3. Please confirm that your authority is:

☐ the competent authority designated as the single point of contact in your Member

State in case of multiple competent authority

☐ the only competent authority in your country

Section 1.2: Scope & coverage

4. Are all contractual consumer disputes covered by at least one ADR entity in each of the economic sectors covered by the ADR Directive¹³⁴ (please see Part II, Question 7 below) in your Member State?

☐ Yes

☐ No

If no, please indicate gaps in coverage:

Is there a residual ADR entity operating in your Member State?

☐ Yes

☐ No

If yes, what is the name of this residual ADR entity:

¹³⁴ consumer goods; energy and water; general consumer services, leisure services; postal services and electronic communications; transport services; others. See also the COICOP classification: https://unstats.un.org/unsd/classifications/unsdclassifications/COICOP_2018_-_pre-edited_white_cover_version_-_2018-12-26.pdf.

Section 1.3: Accreditation, quality criteria and monitoring of ADR entities

5. In the past 4 years, have you received accreditation/assessment requests? If yes, how long does the assessment take and how much resources do you need? What is the feedback from the ADR bodies on the accreditation procedure? Did you modify your accreditation process over the past 4 years

and if yes how and why?

How do you monitor the compliance of ADR bodies with Directive 2013/11/EU and what kind of monitoring mechanism is used:

- ☐ Spot-checks,
- ☐ Annual activity reports (Art. 7(2)),
- ☐ Bi-annual reports (Art. 19(3)),
- ☐ Other monitoring mechanisms (please specify in the text box below)?

Please specify the frequency (if relevant) of such monitoring:

Have you delisted¹³⁵ ADR bodies in the last four years? If yes for which reasons?

Are there any other consumer dispute resolution bodies/tools in your country that are not accredited as quality ADR entities in accordance with the ADR directive, but which still resolve consumer disputes out-of-court?

- ☐ Yes

¹³⁵ In case of a merge of ADR entities, the merged entity is to be considered delisted.

☐ No

☐ I don't know

If yes, please explain why those bodies are not accredited:

Section 1.4: Collective ADR

9. Is ADR possible in case of collective claims (opt-in/opt-out procedure, where the claim is brought on behalf of all those who fall within a defined class of claimants unless they take positive steps to opt out – see Recital 27 of the ADR Directive) under your national law?

☐ Yes

☐ No

11. Is ADR possible for disputes claimed by multiple consumers (so-called grouped claims, which lead to a settlement of a large number of similar small claims instead of having to process each claim individually) as the same procedure?

☐ Yes

☐ No

Section 1.5: Cross-border ADR

12. Are the ADR procedures for cross-border disputes in your Member State different from the procedure for domestic cases?

☐ Yes

☐ No

If yes, please explain how these are different:

13. How do you assess the functioning of the ADR Directive in cross-border disputes in your

country? What are the obstacles and/or challenges encountered? What solutions have you implemented?

Section 1.6: Funding model

14. Is the funding model of the ADR procedure in your Member State based on:

- ☐ **Public funding**
- ☐ **Private funding (i.e. costs are borne by traders)**
- ☐ **Mix of public and private funding**
- ☐ **Other**

Please explain:

Do ADR entities have a profit or not-for-profit character in your Member State?

- ☐ **Profit**
- ☐ **Not for profit**
- ☐ **Mix of profit and not-for-profit**
- ☐ **I don't know**

Please explain:

Section 1.7 Other Questions

15. Are there customised procedures in place for vulnerable consumers (particularly vulnerable due to their mental or physical infirmity, age or credulity – see Article 5(3) of the Unfair Commercial Practices Directive)? Consumers may also be deemed as vulnerable based on their low socio-economic status, low education level, not being able to speak a particular language, or a minority status or having no IT skills.

- ☐ **Yes**
- ☐ **No**

If yes, please explain:

How can consumers complain about the functioning of the ADR entities in your Member State? Are you aware of any complaints over the past 4 years? If so, how were they handled? Which body is in charge of such complaints? Please specify:

Please elaborate further in case your Competent Authority has specific governance structure or internal procedures which are relevant to highlight under PART I:

PART II: ACTIVITIES OF ADR ENTITIES

Please note that to complete Part II, information will need to be collected from all competent authorities (if multiple authorities exist in your Member State). We therefore ask the ADR competent authorities to collect the relevant data from all ADR entities notified to the Commission and consolidate the data. If not all the requested data is available for all the years, we encourage you to add the most recent data and provide more information in the open text boxes, where relevant.

Section 2.1 Statistics

The below statistics should cover all accredited ADR bodies in your country. However, if only partial data is available, please indicate the coverage of the data you are providing

1. How many complaints (i.e., before the admissibility check as per Article 5(4) ADR Directive was carried out) were received by all ADR entities of your country?

| | 2018 | 2019 | 2020 | 2021 |
|-------------------------------|------|------|------|------|
| Number of complaints received | | | | |

2. How many complaints received by the ADR entities were subsequently withdrawn by consumers?

| | 2018 | 2019 | 2020 | 2021 |
|---|------|------|------|------|
| Number of complaints withdrawn by consumers | | | | |

3. How many complaints were refused by the ADR entities, on the grounds listed in Article 5(4) ADR Directive?

| | 2018 | 2019 | 2020 | 2021 |
|---|------|------|------|------|
| Number of complaints rejected by ADR entity | | | | |

The percentage of complaints refused for the following reasons:

- a) no previous attempts to contact the trader
- b) the complaint has been frivolous/vexatious
- c) the dispute was previously assessed by another ADR entity or a court
- d) the value of the claim has not reached an applicable threshold
- e) the complaint was not lodged in due time
- f) the resolution of a complaint would undermine the effective functioning of the ADR entity
- g) any other reason

Please include comments in the text box below, if any:

| |
|--|
| |
|--|

How many disputes have been accepted for handling per year (i.e., the total number of complaints minus those refused or withdrawn)?

| | 2018 | 2019 | 2020 | 2021 |
|--|------|------|------|------|
| Number of ADR disputes accepted for handling by ADR entities | | | | |

4. *[If answer to Part 1 Q 5 above is "yes"]* How many consumer complaints are submitted to the residual ADR entity? How many are rejected? How many have been accepted?

| | 2018 | 2019 | 2020 | 2021 |
|--|------|------|------|------|
| Number of complaints <u>received</u> by residual ADR entity (before admissibility check) | | | | |
| Number of <u>refused</u> complaints by residual ADR entity (as per Art 5(4) ADR Directive) | | | | |
| Number of complaints <u>withdrawn</u> by consumer | | | | |
| Number of disputes handled by residual ADR entity | | | | |

5. Of all the ADR disputes handled by the ADR entities covered by your competent authority, can you elaborate more on the types of disputes handled? (please include numbers and text if appropriate in the table below):

| Number of ADR disputes by: | 2018 | 2019 | 2020 | 2021 | Open answer if no data available |
|----------------------------|------|------|------|------|---|
| | | | | | |

| | | | | | |
|---|--|--|--|--|--|
| sector of economic activity | | | | | |
| Consumer goods (e.g., clothing and footwear; detergents, cosmetics and perfumes; household appliances; watches and clocks; furniture; musical instruments; sports goods; toys and tools) | | | | | |
| Energy and water (e.g., water supply, sewage collection, electricity, gas, maintenance) | | | | | |
| Financial services (e.g., financial intermediation; explicit charges by deposit taking corporations; remittances fees) | | | | | |
| General consumer services (e.g., repair, installation and hire of consumer goods) | | | | | |
| Leisure services (e.g., expenditures for amusement parks; games of chance; practicing sports; attendance of sport events) | | | | | |
| Postal services and electronic communications (e.g., courier and parcel delivery; mobile communication; internet access provision) | | | | | |
| Transport services (e.g., passenger transport services) | | | | | |
| Other | | | | | |

| | | | | | |
|---|--|--|--|--|--|
| applicable law infringed | | | | | |
| individual vs collective claims | | | | | |
| type of trader involved (e.g. multinational company vs. SME) | | | | | |

Section 2.2: Outcome of ADR disputes

6. Of all the ADR disputes handled by the ADR entities covered by your competent authority, how many of the ADR disputes* ended up in a resolution (i.e., where parties reached an agreement or agreed with an outcome proposed by the ADR entity, or a binding outcome was delivered)? Please provide available data to the extent possible.

(* = complaints that became disputes/ were not rejected or withdrawn)

| | 2018 | 2019 | 2020 | 2021 |
|--|------|------|------|------|
| Number of ADR disputes <u>resolved</u> | | | | |

If you have no data available, please describe your assessment of the success rate:

Of all the ADR disputes handled by the ADR entities covered by your competent authority, what was the number of disputes per year where the trader did not reply to the claim/refused to participate? Please provide available data to the extent possible.

| | 2018 | 2019 | 2020 | 2021 |
|--|------|------|------|------|
| Number of ADR disputes where trader did not respond/refused to participate | | | | |

Please add any comments here on the level of participation of traders in ADR in your country:

Of all the ADR disputes handled by the ADR entities covered by your competent authority, how many days on average ADR entities take to issue a final decision?

11. In this respect, was there any progress made over the last 4 years in terms of time taken to resolve a dispute?

- ☐ Yes
- ☐ No
- ☐ I don't know

Please elaborate, if needed:

| |
|--|
| |
|--|

12. Of all the ADR disputes, in how many cases was there a judicial review of the ADR outcome (i.e., cases which were tried in court after an ADR procedure had been finalised)? Please provide available data to the extent possible.

| | 2018 | 2019 | 2020 | 2021 |
|--|------|------|------|------|
| Number of ADR disputes under judicial review | | | | |

Please add any comments here on the judicial review of the ADR outcome in your country:

| |
|--|
| |
|--|

Please use the below box to elaborate on specific definitions in your national ADR law which is of relevance, notably as the ADR directive is of minimal harmonisation and/or give more/other statistical data which could not fit the above boxes:

| |
|--|
| |
|--|

Section 2.3 Monitoring & compliance

13. Who, if any, monitors or verifies traders' compliance with the outcome of the ADR procedure by the parties? Please provide details in the text box below:

| |
|--|
| |
|--|

In case there is no automatic enforceability of ADR outcome in your country, to what extent do traders respect the ADR outcome?

- ☐ Very likely
- ☐ Likely
- ☐ Neutral

- ☐ Unlikely
- ☐ Very unlikely
- ☐ I don't know
- ☐ Not applicable

Please include comments in the text box below, if any:

Section 2.4: Resources and costs

14. What fees or charges do consumers have to pay to use the ADR system in your country? Have these increased or decreased since 2018?

15. Has there been any data collection/study (e.g. cost-benefit analysis or impact assessment) on the cost of ADR in your country?

- ☐ Yes
- ☐ No
- ☐ I don't know

If so, what were their key findings? Please provide weblinks to the studies in the text box below:

Section 2.5: ADR Digitalisation

16. Which of the following digital tools do accredited ADR entities in your Member State use?

- ☐ Website
- ☐ Online forms to file a complaint
- ☐ Digital case management tools
- ☐ Video-conferencing facilities for ADR hearings
- ☐ Advanced solutions/legaltech (such as chatbot)
- ☐ Other
- ☐ None of the above

Please specify advanced/legaltech and “other” digital solutions in use and whether the uptake of digital tools by accredited ADR entities is increasing. If not, what are the challenges?

Are there online dispute resolution systems in your Member State which are not maintained by the accredited ADR entities? E.g. ODR systems designed by law offices, private claim companies or traders

- ☐ Yes
- ☐ No
- ☐ I don't know

If relevant, please elaborate on whether you evaluate their relevance and fairness to resolve consumer disputes and whether you are aware of any complaints against these ODR systems:

If relevant, please elaborate on specific challenges and opportunities linked to ADR digitalisation in your Member State:

PART III: BEST PRACTICES, SHORTCOMINGS & RECOMMENDATIONS

This part requires information on best practices, shortcomings and recommendations regarding the period 2018-2021

Section 3.1 Best practices & cooperation

What measures have been taken in your Member State to promote/incentivise the participation of traders in ADR and how do you assess the success of these

measures? (please provide data supporting your assessment)

What measures have been taken in your Member State to increase the awareness of consumers on ADR and how do you assess the success of these measures? (please provide data supporting your assessment)

**(Please elaborate on the formal (e.g. Memorandum of Understanding, other form of agreement) or non-formal cooperation (e.g. sharing of data related to problematic traders, trainings for staff, co-organisation of public events, etc.) in Q.3-Q7 below)*

If there is more than one ADR competent authority in your Member State, please provide a short description of the cooperation among competent authorities:

Please describe the cooperation between ADR competent authorities and ADR entities and other relevant stakeholders (e.g., law enforcement authorities, regulators, etc.) in your Member State. This can be, for instance, administrative cooperation between ADR entities and competent supervisory authorities or regular inter-institutional consultations:

Please describe the cooperation between ADR entities (Article 16 ADR Directive):

Please describe the cooperation between ADR entities and the national authorities enforcing Union legal acts on consumer protection in your Member State (Article 17 ADR Directive):

What other steps have been taken by your authority to improve the functioning of ADR, including to increase the use of digital tools in ADR?

Do you already foresee other actions throughout 2022/2023 which might improve the functioning of ADR?

Section 3.2 Challenges and shortcomings

4. How has the COVID-19 pandemic impacted the use and success rate of the ADR system in your country? Are there any lessons learnt from the application of the ADR and ODR legislation during the COVID-19 pandemic?

5. In your opinion, to what extent are EU-wide actions (e.g. ADR networks such as FIN-NET, TRAVELNET, and EU specific legislation) successful in resolving cross-border disputes? Do you have other suggestions?

6. Are there any other problems, shortcomings or gaps to the ADR Directive that you would like to mention?

Section 3.3. Recommendations

7.

Would you have any recommendations for the improvement of the ADR Directive, if this had to be revised in the near future?

Note: Once you submit your survey, you will be able to download your answers and re-use the form to develop the ADR report. We recommend that you use the same structure as in this survey.

EU level desk review

An external contractor conducted an extensive EU level desk review of sources addressing the legal framework, EU policy documents, reporting from the Commission on the implementation of ADR/ODR, related European Commission studies and reports, Commission materials from meetings, trainings and conferences, publications from consumer and trader organisations, national level reports, relevant data, and other sources (e.g., academic publications). Moreover, the Commission also contracted the services of a legal professor, Prof Stefan Voet to carry out a mini legal study “Recommendations regarding the future needs of ADR” which is accessible [here](#).

ADR Behavioural Study

The study sought to identify potential policy options that could improve the effectiveness and relevance of the ADR framework, with an overarching objective to assess ways of providing ADR information to consumers on the websites of traders and ADR entities in terms of how it affects awareness and take-up of ADR. The study began with a preparatory phase to review existing literature in the fields of behavioural science and ADR generally, as well as relevant EU legislation. The findings of the literature review were used to inform policy options relating to the provision of ADR information by traders and ADR entities, to be tested via subsequent behavioural experiments.

The next phase involved both online and laboratory-based behavioural experiments conducted in several Member States. These were conducted as a sequential study, whereby the results from the online experiment were used to refine the experimental treatments tested in the lab. The online behavioural experiment was conducted in four countries (Austria, Italy, Poland, and Sweden) with a total of 4,050 respondents. The lab experiment was conducted in two countries (Germany and Spain) with a total of 601 respondents. In addition, eye tracking was also conducted with 100 of the lab respondents in Spain.

The experiments simulated the process of browsing traders’ websites to find information on ways the consumer could resolve a dispute that they had with the trader. Experiment treatments changed the structure, salience, and content of ADR information, to test the effects of these changes on intention to use and understanding of ADR. In the second part of the experiment respondents were placed on an ADR entity website where, again, information provision was varied to test the effect on their propensity to choose ADR to resolve their dispute.

Table 1 Treatments tested on the trader websites – online

| Treatment | Description |
|---------------|---|
| TO1: Baseline | ADR information was given on the pages where traders usually do so in reality, i.e., the ‘Refunds and Complaints’ and ‘Terms and Conditions’ pages. |

| | |
|--|---|
| TO2: ADR information on a separate page | ADR information was separated from other information, by placing it on dedicated page (with no other (non-ADR) information), which was linked from the header of the trader's home page. |
| TO3: ADR information signposted from top of page | ADR information was 'signposted' from the top of the relevant pages (e.g., the 'Terms and Conditions' page). The signposted stated: "If you have made a complaint with us but we were unable to resolve it for you, you may be able to use Alternative Dispute Resolution (ADR). For more information about ADR, please click here." This was saliently presented in a box at the top of the pages. |
| TO4: Information divided across separate tabs | Information (including ADR information) was divided across separate tabs within the relevant page, with a dedicated tab for ADR information. For example, on the 'Returns and Complaints' page of the TV retailer, separate tabs covered (i) right to withdrawal, (ii) complaints and (iii) dispute resolution. |

Table 2 Treatments tested on the trader websites – laboratory

| Treatment | Description |
|--|---|
| TL1: No ADR information | All mention of Alternative Dispute Resolution or Online Dispute Resolution was removed. |
| TL2: ADR information | As per TL1, except ADR was mentioned: " <i>If we [the trader and consumer] cannot resolve the issue together, there is a possibility to use Alternative Dispute Resolution (ADR)</i> ". |
| TL3: ADR information & ODR link | As per TL2, except with a clickable link to a mock-up of the ODR platform added. Additional text (vs TL2) stated: " <i>A list of ADR providers that meet the European quality requirements and monitored by the national authorities is available at https://ec.europa.eu/consumers/odr</i> ". |
| TL4: ADR information & ADR entity link | As per TL2, except with clickable link to a mock ADR entity home page. Additional text (vs TL2) stated: "You may refer your complaint directly to The Dispute Resolution Centre, which is a certified Alternative Dispute Resolution body, at https://disputeresolutioncentre.ie ". |

Table 3 Treatments tested on the ADR entity website – online

| Treatment | Description |
|---|---|
| EO1: Baseline | Resembled existing ADR entity websites as they currently are. |
| EO2: Information divided across separate tabs | Like TO4 (for the trader websites) information was divided across separate tabs, covering (i) the ADR entity's details (ii) rules and |

| | |
|--|--|
| | procedures and (iii) the cost, speed and effectiveness of the ADR process. |
| EO3: Highlight benefits of ADR using statistics | The benefits of ADR – the time to resolve disputes and share of cases resulting in agreement – were saliently presented towards the top of the home page, as was the number of people using ADR, which was shown to be increasing over time via a chart. |
| EO4: Highlight benefits of ADR relative to court | The benefits of ADR relative to court – that ADR is easy, quick, fair and low cost – were presented saliently, in box towards the top of the home page, as one-word bullet points (“easy”, “quick”, etc.) in bold. |

Table 4 Treatments tested on the ADR entity website – laboratory

| Treatment | Description |
|--|---|
| EL1: Baseline | Same as the online experiment baseline (EO1). |
| EL2: Information divided across separate tabs | Same as EO2 in the online experiment except that, instead of the tab with the ADR entity’s details, respondents landed on the tab giving the cost, speed and effectiveness of the ADR process. |
| EL3: Highlight benefits of ADR relative to court – Table of attributes | Added a salient table highlighting the benefits of ADR relative to court by comparing the two route’s attributes, namely average time to resolve disputes (40 days for ADR, 100-700 days for court), typical costs (free for the ADR entity shown, “Court costs + lawyer’s fees” for court) and agreement rates (65% for both). |

For the trader websites, the main outcome measures are the proportion of respondents indicating their next step would be ADR (measured via questions asked after respondents viewed the websites), and respondents’ understanding of ADR after seeing the websites. Similarly, for the ADR entity website, the main outcome measures are the share of respondents choosing to go to ADR, and respondents’ understanding following the website. For both website types, understanding was measured as respondents’ average score on test questions.

| |
|--|
| Source |
| Legal framework |
| <ul style="list-style-type: none"> • 2013 Directive on consumer ADR¹³⁶ • 2013 Regulation on consumer ODR¹³⁷ • 2015 Implementing Regulation of the Regulation on consumer ODR¹³⁸ |

¹³⁶ 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), OJ L 165, 18.6.2013, p.63-79.

¹³⁷ Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Regulation on consumer ODR), OJ L 165, 18.6.2013, p.1-12.

¹³⁸ Commission Implementing Regulation (EU) 2015/1051 of 1 July 2015 on the modalities for the exercise of the functions of the online dispute resolution platform, on the modalities of the electronic complaint form and on the modalities of the cooperation between

| |
|--|
| 2020 Proposal for a Single Market for Digital Services (Digital Services Act) and amending Directive |
| EU policy documents |
| Commission Recommendation 98/257/EC on the principles applicable to the bodies responsible for the out-of-court settlement of consumer disputes¹³⁹ |
| Commission Recommendation 2001/310/EC on the principles for out-of-court bodies involved in the consensual resolution of consumer ADR¹⁴⁰ |
| 2011 Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions: Single Market Act - Twelve levers to boost growth and strengthen confidence "Working together to create new growth" |
| 2020 Communication from the Commission to the European Parliament and the Council: New Consumer Agenda 2020-2025 |
| Reporting from the Commission on implementation ADR/ODR |
| 2011 Impact Assessment of the current ADR¹⁴¹ |
| 2019 report on the application of Directive on consumer ADR and Regulation consumer ODR¹⁴² |
| Annual statistical reports on the functioning of the European ODR platform (since 2017)¹⁴³ |
| Related European Commission studies and research outputs |
| ToR for the "behavioural study" |
| ToR for the "mini legal study" |
| European Commission, 2017 online dispute resolution webscraping report¹⁴⁴ |
| European Commission, 2015 ex-ante evaluation for a communication campaign on ADR and ODR¹⁴⁵ |
| Midterm evaluation of the Consumer Programme 2014-2020¹⁴⁶ |
| Consumer Programme statement¹⁴⁷ |
| 2018 Report of the European Law Institute and of the European Network of Councils for the Judiciary the Relationship between Formal and Informal Justice: The Courts and ADR |
| 2019 Consumer Conditions Scoreboard¹⁴⁸ |
| 2021 Consumer conditions survey¹⁴⁹ |

contact points provided for in Regulation (EU) No 524/2013 of the European Parliament and of the Council on online dispute resolution for consumer disputes, OJ L 171, 2.7.2015, p.1-4.

¹³⁹ OJ L 115, 17.04.1998.

¹⁴⁰ OJ L 109, 19.4.2001.

¹⁴¹ EUR-Lex - 52011SC1408 - EN - EUR-Lex (europa.eu)

¹⁴² https://ec.europa.eu/info/sites/default/files/com_2019_425_fl_report_from_commission_en_v3_p1_1045545_0.pdf

¹⁴³ <https://ec.europa.eu/info/sites/default/files/2021-report-final.pdf>

¹⁴⁴ European Commission, Online dispute resolution: Webscraping of EU traders' websites, JUST/2016/CONS/FW/CO03/0104 28.3.2018.

¹⁴⁵ European Commission, Ex-ante evaluation for a communication campaign on Alternative Dispute Resolution (ADR) and Online Dispute Resolution (ODR) – Final report, 14 December 2015.

¹⁴⁶ European Commission, Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions On the mid-term evaluation of the Consumer Programme 2014-2020, COM(2019) 490 final, Brussels, 7.11.2019.

¹⁴⁷ DG JUST, Programme Statements – Consumer Programme, Heading 3: Security and citizenship, DB2021.

¹⁴⁸ European Commission, Consumer Conditions Scoreboard – Consumers at home in the Single Market – 2019 edition, Luxembourg, 2019.

¹⁴⁹ Market monitoring | European Commission (europa.eu)

| |
|--|
| 2023 Consumer conditions scoreboard¹⁵⁰ |
| Market Monitoring Survey 2019-2020¹⁵¹ |
| Annual justice Scoreboard (since 2013)¹⁵² |
| Report on ADR in travel sector (2012 and then updated in 2019)¹⁵³ |
| ODR Platform: Applying the design thinking and behavioural economics principles to the user interfaces |
| 2021 E2E Usability test report¹⁵⁴ |
| 2020 Imagine Phase Report¹⁵⁵ |
| Exploratory Study on information technology for use in online dispute resolution of consumer disputes¹⁵⁶ |
| Evaluation study of national procedural laws and practices in terms of their impact on the free circulation of judgments and on the equivalence and effectiveness of the procedural protection of consumers under EU consumer law¹⁵⁷ |
| Recommendations from academic research regarding future needs of the EU framework of the consumer Alternative Dispute Resolution (ADR), (JUST/2020/CONS/FW/CO03/0196)¹⁵⁸ |
| Commission materials from meetings, trainings and conferences |
| Outcome report of the DG JUST-DG MOVE meeting with travel ADRs during COVID, [date unknown] |
| Collective redress in the EU: The new Directive on Representative Actions for the Protection of Collective Interests of Consumers, June 2021 |
| Consumer Summit 2021, discussion paper Workshop 2: Challenges and opportunities for digital markets |
| Consumer Policy Network Meeting, Jan 2022 |
| PROPOSED ACTIONS ALTERNATIVE DISPUTE RESOLUTION |
| Online Dispute Resolution – 4 steps to better business¹⁵⁹ |
| 2018 Consumer Law Ready: an EU-wide consumer law training programme for SMEs |

¹⁵⁰ https://commission.europa.eu/document/89ea35fe-728f-4749-b95d-88544687583c_en

¹⁵¹ Key consumer data | European Commission (europa.eu)

¹⁵² THE 2021 EU JUSTICE SCOREBOARD (europa.eu)

¹⁵³ Alternative Dispute Resolution in the Air Passenger Rights sector (europe-consommateurs.eu)

¹⁵⁴ DG JUST – Unit E3, E2E Usability test report – ODR Platform: Applying the design thinking and behavioral economics principles to the user interfaces, 01.2021.

¹⁵⁵ Deloitte, Imagine Phase Report – ODR Platform: Applying the design thinking and behavioral economics principles to the user interfaces, 07.2020.

¹⁵⁶ European Commission, Functional Analysis (Expanded Form) – Specific Contract n° ABCIV – SC-221 under Framework Contract n° DI/07625 Lot 3 – in response to the request for offer ABC IV – 000221: “Exploratory Study on information technology for use in online dispute resolution of consumer disputes”, 28.5.2020.

¹⁵⁷ European Commission, An evaluation study of national procedural laws and practices in terms of their impact on the free circulation of judgments and on the equivalence and effectiveness of the procedural protection of consumers under EU consumer law, Strand 2 – Procedural Protection of Consumers, Luxembourg, 2017.

¹⁵⁸ Prof. Voet et al., Recommendations from academic research regarding future needs of the EU framework of the consumer Alternative Dispute Resolution (ADR), (JUST/2020/CONS/FW/CO03/0196), June 2022

¹⁵⁹ European Commission, Online Dispute Resolution – 4 steps to better business

| |
|---|
| New project led by ECC Net on cross border disputes, 2022– <i>documents tbc</i> |
| New project led by eCommerce Europe, 2022 – <i>documents tbc</i> |
| ADR assembly 2021 materials ¹⁶⁰ |
| Cross-border ADR roundtable - 21 June 2022 (Brussels) |
| Consumer and trade organisation publications |
| 2020 BEUC report – Stepping up the enforcement of Consumer Protection Rules |
| 2022 BEUC Paper: BEUC’ preliminary list of issues to consider when revising the regulatory framework for consumer ADR/ODR in Europe |
| 2022 BEUC Paper: Alternative Dispute Resolution for Consumers: Time to move up a gear |
| 2021 European e-commerce report ¹⁶¹ |
| National level reports |
| 2018 national reports on the development and functioning of ADR entities |
| ODR contact points activity reports |
| Data |
| ECC-Net data on ADR |
| Eurostat data on consumer purchases in different sectors |
| ODR platform statistics |
| Statistics on all direct talks (since mid 2019) DT_Stats 20220311 |
| ODR exit survey of traders and consumers ¹⁶² |
| Marketing performance overview (Jan – Dec 2021) |
| Statistical tables on complaint data |
| ODR statistics 1-3 |
| Data collected for upcoming Justice scoreboard |
| Other |
| 2013 policy brief on implementing the Directive on consumer ADR ¹⁶³ |
| UK government, 2021, Mandatory ADR Impact Assessment ¹⁶⁴ |
| Academic Literature |

¹⁶⁰ 2nd Alternative Dispute Resolution (ADR) Assembly 2021 - About the event (b2match.io)

¹⁶¹ Lone, S., Harboul, N. & Weltevreden, J.W.J., 2021 European E-commerce Report, Amsterdam/Brussels: Amsterdam University of Applied Sciences & eCommerce Europe, 2021.

¹⁶² Raw survey data shared by DG JUST downloaded on 15.3.2022.

¹⁶³ The Foundation for Law, Justice and Society, Implementing the EU Consumer ADR Directive

¹⁶⁴ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1051030/mandatory-alternative-dispute-resolution-impact-assessment.pdf

EU level interviews

To collect EU-level feedback on the relevance and shortcomings of the ADR / ODR framework, as well as on specific issues of efficiency, we conducted seven interviews. These include the EU level scoping interviews conducted in the inception phase.

Table 1: List of EU-level interviews

| Type of organisation | Organisation | Status |
|---------------------------------------|---|-------------|
| European Commission | DG JUST E.3. Information Systems Officer - Management of the ODR platform | completed |
| ADR competent authorities | Portugal | completed |
| EU mediator organisation | European Energy Mediators Group | completed |
| EU trade organisation and association | Business Europe | completed |
| | Eurochambers | declined |
| | Ecommerce Europe | completed |
| EU consumer organisation | BEUC | completed |
| EU ADR networks | NEON | no response |
| | Network of telecom ADRs | completed |

Case studies

To gain a richer understanding of the specific context, dynamics, and cross-cutting issues of the ADR/ODR Framework, five case studies were selected; three sectoral case studies covering the travel sector, e-commerce and financial services sector and two horizontal case studies on the use of Artificial Intelligence in ODR and accreditation. The 5 case studies are accessible here.

The sample of Member States covered by the case studies was agreed by DG JUST after the submission of the inception report. The rationale for the country selection considered criteria such as population and market size, a geographic balance between western, central, eastern, southern and northern Europe, and the diversity in the situation regarding the number and types of ADR entities. On the latter, for the sectoral case studies, Member States with a specific sectoral ADR entity were prioritised.

Each case study covers a sample of three Member States. However, in some case studies, the contractor interviewed stakeholders from other Member States outside the original sample due to the client's interest in an additional Member State after the agreed sample or to fill stakeholder gaps. Therefore, the table below shows the selected Member States covered under each case study (in green) and the additional Member States partially or entirely covered in some case studies due to additional interviews with stakeholders outside the country sample (in yellow).

Table 2: Country sample used for case studies

| | A T | B E | C Z | D E | D K | E E | E S | E L | F I | F R | H U | I E | I T | L T | L V | M T | N L | P L | P T | S E | Summary |
|-------------------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|---------------|
| Travel | | | | X | | | X | X | | | | | | | | | | | | | DE, ES and EL |
| Fin retail | | | | | | | | | x | X | | x | X | | | X | | | | | FR, IT and MT |
| E-commerce | x | X | | | | | x | | | | | | | | | | | | | X | BE, ES and SE |

| | | | | | | | | | | | | | | | | | |
|----------------------|---|---|---|--|--|--|---|---|--|---|--|---|---|---|--|--|----------------------|
| Accreditation | x | x | | | | | X | X | | | | x | x | | | | FI, FR and LV |
| AI in ODR | | | X | | | | | | | X | | | | X | | | DE, IT and NL |

The case studies are based on desk research and insights from different types of stakeholders representing the sample of Member States. The table below shows the number of interviews conducted per stakeholder group for each case study. It is important to note that some interviews were used for more than one case study e.g. the AI in ODR, accreditation and e-commerce case studies used feedback from other case studies. In addition, in some case studies specific questions were asked as part of the national level interviews with ADR authorities and ODR contact points.

Overall, across the sectoral and horizontal case studies, 43 interviews were conducted and have been used for the case studies and analysis for this report.

Table 3: Overview of stakeholders consulted for the case studies

| Case Study | ADR authorities | ODR contact point | ADR entity | Trader / Trade org. | Consumer org. | Other | TOTAL |
|------------------------|-----------------|-------------------|------------|---------------------|---------------|------------------|-----------|
| Travel | | | 3 | 4 | | 4 ¹⁶⁵ | 11 |
| E-commerce | | | 3 | 1 | 1 | 2 | 7 |
| Fin retail | 1 | | 4 | | 1 | 1 | 7 |
| Accreditation * | 2 | | 4 | | 1 | | 6 |
| AI in ODR | 3 | 3 | 2 | 1 | | 2 | 11 |
| TOTAL | 6 | 3 | 16 | 6 | 3 | 9 | 43 |

Open Public Consultations

i. Backward-looking consultation

Running in parallel with other information gathering exercises, a public consultation was set up through the online survey tool, EU survey, to collect views on the functioning of ADR and ODR and the consumer enforcement mechanism from the general public, and relevant stakeholders, including consumer organisations, trader organisations, and ADR entities.

The questionnaire was developed by DG JUST, with the support of the study team. Besides standard profiling questions, the OPC comprised 14 technical questions focussed on the following topics:

- Respondents' experience of online retail as consumers and traders in 2021;
- Respondents' overall awareness of dispute resolution mechanisms available to consumers and traders;
- Respondents' views on ADR systems; and
- Respondents' opinions on the role of public authorities in the context of cross-border disputes.

¹⁶⁵ These interviews were with the European Commission (DG GROW and DG MOVE), one claims agency, and one NEB.

The backward-looking open public consultation ran from 4 April 2022 to 27 June 2022. By this date, 121 complete responses were received and analysed for the purposes of the study. The summary report and full analysis of the OPC is found [here](#).

ii. Forward-looking consultation and Call for Evidence

The summary report of the Public Consultation is found [here](#). The outcome of the Call for Evidence is found in the Stakeholders Consultation Annex to the Impact Assessment accompanying the Commission legislative proposal amending the current ADR Directive.

ANNEX III: QUESTIONS MATRIX FOR THE ADR DATA COLLECTION STUDY

RQM Application and results

| APPLICATION: How the ADR/ODR legislation is applied in practice, who is using its tools, and what are their opinions? | | | |
|---|--|---|--|
| Research question | Sub-questions | Methods | Data sources |
| 1. What type of ADR landscape did application/implementation of the ADR Directive result in? | <p>a. Transposition</p> <ul style="list-style-type: none"> - How has the ADR Directive been implemented across the Member States (e.g. primary law, regulation, administrative acts, etc.)? A1. - Were there any amendments made to the implementing legislation? A2 - Does the implementing legislation go beyond minimum harmonisation, i.e., are there any gold-plating measures)? A3 <p>b. ADR Scope/coverage:</p> <ul style="list-style-type: none"> - Does the ADR procedure have partial or full coverage of businesses, including SMEs? B1 - To what extent, does subscription-based coverage of businesses (i.e., when ADR entity is facilitated by a trader's organization), exist across the Member States? Is so, in which economic sectors? B2 - Do ADR bodies handle consumer disputes in all retail sectors (generic ADR bodies) or only in specific sectors (specific ADR | <p>Mapping of ADR landscape at national level</p> <p>Comparative analysis of the ADR bodies and procedures across the EEA/EU countries</p> <p>Stakeholder opinion</p> | <p>National level: desk research</p> <p>Online survey questionnaire for the ADR competent authorities (as noted)</p> <p>National level interviews: ADR competent authority</p> |

APPLICATION: How the ADR/ODR legislation is applied in practice, who is using its tools, and what are their opinions?

| Research question | Sub-questions | Methods | Data sources |
|-------------------|--|---------|--------------|
| | <p>bodies)? Are there any residual ADR bodies? Qu. 4</p> <ul style="list-style-type: none"> - Are the ADR entities in your MS only handling consumer disputes or also other disputes which might fall under civil responsibility? C2 <p>c. Quality criteria & accreditation/certification:</p> <ul style="list-style-type: none"> - What are the accreditation methods adopted by the national authorities to certify the ADR bodies? C1 What quality criteria (transparency, independence, availability/cost and expertise in dispute resolution, or other criteria) can be found in the applicable national law? C3 - How are the quality criteria verified (transparency, independence, availability/cost and expertise in dispute resolution, or other criteria)? C4 - Do Member States use a open or closed list of entities (i.e. where no | | |

APPLICATION: How the ADR/ODR legislation is applied in practice, who is using its tools, and what are their opinions?

| Research question | Sub-questions | Methods | Data sources |
|-------------------|--|---------|--------------|
| | <p>further entities can be added in the MS)? C5</p> <ul style="list-style-type: none"> - Is there a separate process (or fee) for multi-sector accreditation?) C6 - To what extent do the Competent Authorities monitor that the ADRs are in compliance with the ADR Directive and what kind of monitoring mechanism are used (e.g., spot-checks, annual reports, etc.)? Qu. 7. + C7 <p>d. ADR models:</p> <ul style="list-style-type: none"> - Which types of ADR models are in place across the EEA countries (e.g., arbitration, conciliation, mediation, ombudsman, industry-led ADR, etc.) and to what extent have they been used? D1 and D2 - Mandatory or Voluntary trader participation in ADR procedures E1 - Is the funding model of the ADR procedure public, private, mixed? (public funding vs. costs to be borne by traders for the running of the ADR) Qu.14 + follow up H6 - Have ADR bodies a profit or not-for-profit character? Qu.15 | | |

APPLICATION: How the ADR/ODR legislation is applied in practice, who is using its tools, and what are their opinions?

| Research question | Sub-questions | Methods | Data sources |
|-------------------|---|---------|--------------|
| | <p>e. ADR procedures</p> <ul style="list-style-type: none"> - Is ADR a compulsory preliminary step before going to court? E2 - Is ADR a possibility in case of collective claims (opt-in/opt-out)? Qu.10+ E3 - Can ADR treat identical or almost identical claims by multiple consumers (so-called grouped claims) as the same procedure? Qu.11 - To what extent are the ADR procedures or practices for cross-border disputes different from the domestic procedures and practices across the Member State, for example in terms of the language of the procedure and collection of evidence? Qu.12 + E4+E5 - Do Member States have customised procedures in place for vulnerable consumers e.g. ADRs offer to assist consumers over the phone, etc? Qu.16+E6 <p>f. Legal effect of ADR procedure:</p> <ul style="list-style-type: none"> - Are the outcomes of an ADR procedure binding or non-binding? F1 | | |

APPLICATION: How the ADR/ODR legislation is applied in practice, who is using its tools, and what are their opinions?

| Research question | Sub-questions | Methods | Data sources |
|--|--|---|---|
| | <ul style="list-style-type: none"> - In case the outcomes are binding, how are they monitored (F3) and how are they enforced? F4 | | |
| 2.To what extent has ADR been used in practice? (i.e. what were the outputs of the ADR Directive?) | <p>g. ADR in practice</p> <ul style="list-style-type: none"> - How many ADR national competent authorities have been appointed in each country? G3 - How many ADR bodies have been accredited in each country? G1 - Is the ADR/ODR landscape fragmented or concentrated? (deduce) - Are there any other dispute resolution bodies/tools that are not certified as ADR entities, but which resolve disputes? Why are those bodies not certified? Qu.9 + D3 + M4 <p>Stakeholder views on</p> <ul style="list-style-type: none"> - the certification process and in particular whether the quality criteria including for cross border ADR are fit for purpose - the related EU sector specific legislation and the extent to which it includes ADR provisions (e.g. the EU energy legislation and the mortgage credit directive provide for out-of-court dispute resolution) - cooperation between ADR authorities and entities and other relevant stakeholders (e.g. law enforcement), for example in terms of sharing data Part III Qu 3-7 - practical application of ADR in cross-border | Mapping and comparative analysis of ADR landscape / complemented by stakeholder opinion | <ul style="list-style-type: none"> -National level desk research -National level interviews: ADR competent authority -Online survey with ADR competent authorities as noted |

APPLICATION: How the ADR/ODR legislation is applied in practice, who is using its tools, and what are their opinions?

| Research question | Sub-questions | Methods | Data sources |
|-------------------|---|---|--------------|
| | disputes, for example in terms of language of the procedure, use of an interpreter, evidence produced abroad, challenges faced by ADR networks (i.e., FIN-NET, TRAVELNET, etc.). Part II Qu 13 | | |
| | <ul style="list-style-type: none"> - How many complaints were received by each ADR entity a year in the period 2019-2021? How does this compare to the overall number of ADR disputes across Member State and in comparison to the situation in 2018? Part II Qu 1 - How many complaints received were refused by the ADR entity a year (by country and sector) in the period 2019-2021? If available: what were the reasons for such a refusal? Part II Qu 3 - How many disputes were launched a year (i.e. total complaints minus those refused) in the period 2019-2021? Part II Qu 5 - What were the most common types of disputes (e.g. number by sector or applicable law infringed, domestic vs cross border, trader or consumer infringement, share of collective ADR cases) Part II Qu 7 - What was the success rate of the complaints that became disputes (not refused) in the period | <p>Quantitative analysis of data on number of ADR complaints and disputes, where possible by country, sector, and type</p> <p>Complemented by direct stakeholder consultation</p> | |

APPLICATION: How the ADR/ODR legislation is applied in practice, who is using its tools, and what are their opinions?

| Research question | Sub-questions | Methods | Data sources |
|---|---|---|---|
| | <p>2019-2021? Part II Qu 8 + G9</p> <ul style="list-style-type: none"> - For how many disputes a year did the trader not reply/refuse to participate? Part II Qu 9 + G7 - What was the average length of time for a dispute to be resolved? Part II Qu 10 + G8 - In how many cases was there a judicial review of the completed ADR? Part II Qu 12 - What has been the level of compliance with the outcome of the ADR? (If data available: In how many ADR cases have the parties complied with the outcome of the ADR procedure?) - How many unsuccessful ADR cases were then addressed through the court system (i.e. number of court cases)? | | |
| 3. How is the ODR legislation <i>applied</i> in practice? | <p>h. ODR application</p> <ul style="list-style-type: none"> - How has the ODR been implemented at national level? J1 - What type of organisations are the ODR contact points in your country? J2 - What is the role of the ODR contact points in your country (J3) - Does the ODR national legislation in your country allow for B2C disputes? J4 <p>i. ODR in practice</p> <ul style="list-style-type: none"> - To what extent have online traders that offer goods/ | <p>Review of sample of trader websites for sample of sectors (through case studies)</p> <p>Stakeholder feedback</p> | <p>National level desk research (as noted)</p> <p>National level interviews: ODR contact points and ECC member</p> |

APPLICATION: How the ADR/ODR legislation is applied in practice, who is using its tools, and what are their opinions?

| Research question | Sub-questions | Methods | Data sources |
|--|--|--|--|
| | <p>services to consumers via a website or other electronic means included an easily accessible electronic link to the EU's ODR website on their sales platform and a specific / designated email contact? J5</p> <ul style="list-style-type: none"> - To what extent is this obligation monitored and enforced by national authorities? C10 - What is the role of the ODR contact Points (e.g. To what extent do national contact points (or other bodies) help consumers in filling their complaints on the ODR platform, and/or provide any other information on the other means of redress when their dispute cannot be resolved through the ODR platform?) | | <p>EU level interview: DG JUST (Margarita Tuch) and ODR exit survey results / contact point reports</p> <p>Case studies (desk review and interviews - all stakeholder types)</p> |
| | <ul style="list-style-type: none"> - How do stakeholders assess its functioning (also in comparison with other national or private ODR), the improved explanations given on the platform and the user-friendliness of the complaint form? (K10) | <p>Stakeholder feedback</p> <p>DG JUST ODR exit survey results and ODR contact point reports</p> | |
| 4. To what extent has the ODR platform been <i>used</i> in practice? (i.e. what were the outputs of the ODR Regulation?) | How many disputes were launched on the ODR platform per year (direct resolution with traders and through ADR entity)? (K1, K2, K3) | Quantitative analysis of data on number of ODR | National research (based on ODR Stats report) |

APPLICATION: How the ADR/ODR legislation is applied in practice, who is using its tools, and what are their opinions?

| Research question | Sub-questions | Methods | Data sources |
|---|--|---|--|
| | <p>How many reached ADR stage?</p> <p>How many complaints received were refused? What were the reasons for refusal? (K4 and K5)</p> | complaints and disputes, where possible by country, sector, and type | <p>ODR Statistical Reports (and expanded background data)</p> <p>EU level interview with DG JUST</p> <p>National interview with ODR contact points</p> |
| | How many cases were resolved inside / outside the platform? (K7) | | |
| | How many cases subsequently addressed through the court system (K9) | | |
| 5.What were the results and impacts of the ADR/ODR legislation? | What has the take up of ADR and ODR been cf. alternatives over time and by group (and why)? (deductive + ADR: G4+G5+G6, ODR: K4 and K5 | Analysis of data on take-up of ADR and ODR cf. alternatives: solution directly with trader, no action despite having legitimate reason to complain (and why), take-up of ADR/ODR, contact public authority, | EU level desk review (Statistics from Consumer Markets Scorecard on recourse ¹⁶⁶ , Statistics from Market Monitoring Survey on problems experienced segmented |

¹⁶⁶ Consumer Markets Scoreboard: making markets work for consumers - 2018 edition | European Commission (europa.eu)

APPLICATION: How the ADR/ODR legislation is applied in practice, who is using its tools, and what are their opinions?

| Research question | Sub-questions | Methods | Data sources |
|-------------------|--|--|---|
| | | <p>escalation – by consumer courts.</p> <p>Including – group¹⁶⁷)</p> <p>where Case studies</p> <p>possible -how this has changed over time and how this varies for ‘vulnerable’ consumers (i.e., segmented by age, by ability to manage financially, by education level).</p> | |
| | <p>To what extent have the ADR networks (i.e., FIN-NET, TRAVELNET, etc.) been successful in resolving cross-border disputes comparing to situations where ADR networks do not exist? What is the impact of such networks on domestic disputes? Part III Qu. 10</p> | <p>Analysis of the costs, and duration of the dispute resolution through ADR networks compared to disputes not involving such networks</p> <p>Stakeholder views on the benefits of ADR</p> | <p>Online survey with ADR competent authorities (to collect data on number of cross border disputes as per RQ2) and Qu.10</p> |

¹⁶⁷ mms-overview-report-19-20_en.pdf (europa.eu)

APPLICATION: How the ADR/ODR legislation is applied in practice, who is using its tools, and what are their opinions?

| Research question | Sub-questions | Methods | Data sources |
|-------------------|--|---|---|
| | | networks issues comparing to situations where ADR networks do not exist | -OPC (Qu.13) -Case studies |
| | To what extent has the application of ADR/ODR legislation increased awareness of the ADR/ODR procedure among consumers and traders between 2019-2021? Part III Qu. 2 (about measures taken to increase awareness) and OPC (q4) | Analysis of number of ADR complaints launched over time Stakeholder feedback of level of awareness | -National level interviews G9-G12 -EU level interviews -Case studies |
| | To what extent has the application of ADR/ODR legislation encouraged trader participation and compliance with the information requirements ? If not, what were the reasons for this lack of action/participation of businesses between 2019-2021? (K6) | Analysis of number of complaints launched where trader did not respond Stakeholder feedback on incentives for trader participation | -OPC (Qu. 4) |

APPLICATION: How the ADR/ODR legislation is applied in practice, who is using its tools, and what are their opinions?

| Research question | Sub-questions | Methods | Data sources |
|-------------------|---|---|--------------|
| | To what extent has the application of ADR/ODR legislation ensured ADR entities offer a consistent level of high quality ADR (i.e. independent, impartial, transparent ADR procedures)? interview C9 | <p>Analysis of application of quality criteria</p> <p>Stakeholder feedback on independence, impartiality and transparency and overall quality of certified ADR entities</p> <p>Analysis of number of court cases following ADR outcomes (RQ2)</p> <p>Analysis of extent to which ADR outcomes were upheld and enforced (RQ2)</p> <p>Number of judicial review of ADR outcomes</p> | |
| | To what extent has the application of ADR/ODR legislation ensured ADR entities offer fast alternative dispute resolution procedures | Analysis of the duration of average ADR procedure (e.g. | |

APPLICATION: How the ADR/ODR legislation is applied in practice, who is using its tools, and what are their opinions?

| Research question | Sub-questions | Methods | Data sources |
|-------------------|-------------------------------------|--|--------------|
| | between 2019-2021? (ODR: K8) | compared to in court resolution) Stakeholder feedback on speed of ADR procedure | |

RQM Efficiency

| Research question | Sub-questions | Methods | Data sources |
|-------------------|---------------|---------|--------------|
|-------------------|---------------|---------|--------------|

a) **COST STRUCTURE OF ADR/ODR**

| | | | |
|---|---|---|--|
| 6.What is the cost structure (from an ADR and ODR perspective)? | <p>What are the types of costs (staff salaries, training, infrastructure (IT tools, publications, etc) borne by</p> <ul style="list-style-type: none"> -the European Commission - ODR contact points -ADR competent authorities -ADR entities, -traders - consumers | <p>Development of cost models for each actor in the system</p> <p>Calculation of the one-off and ongoing costs for actors in the system</p> | <p>National level research on costing models used (see RQ1)</p> <p>EU level interview with DG JUST (Margarita Tuch) on ODR costs</p> <p>National level interviews: ADR competent authority and ODR contact point ADR: H1, H2, H3, H6,H7, H8, H9,</p> |
|---|---|---|--|

| Research question | Sub-questions | Methods | Data sources |
|---|---|--|---|
| | in applying the ADR/ODR legislation? | | H10, H11, H11; ODR: L1-L4) Case studies: desk review on cost in sample of countries & interviews with competent authorities, ADR entities, traders and consumer organizations |
| | To what extent do these costs vary by model or country? | Quantitative analysis of costs variance between countries and public versus private model Qualitative feedback on costs for a sample of different models used | |
| 7.What is the cost-effectiveness of ADR for Member States (ADR competent authorities and ADR entities)? | What is the minimum volume of disputes to make ADR cost-efficient? | Calculation and monetisation of benefits (where possible) generated by ADR for national authorities Calculation of cost per resolved dispute Calculation of minimum number of disputes | |
| 8.To what extent can the ADR/ODR be considered as cost effective for the EU as a whole? | What are the wider economic benefits of ADR and ODR for the European economy and how do these compare to the costs borne at EU level? | Calculation and monetisation of benefits (where possible) generated by ADR and ODR at EU level Qualitative feedback on benefits at EU level | Review of EC documentation and Eurostat data Stakeholder consultations with EU officials and EU level organisations |

b) COST OF COMPLIANCE FOR TRADERS IN PARTICIPATING IN ADR/ODR

| | | | |
|--|--|--|--|
| 9.What is the balance of costs for traders: What is the cost burden for individual | What are the costs incurred by traders? For example, what are the information requirements for traders of participating in and | Calculation of costs (where possible by sector) Qualitative feedback from traders on main administrative burden/costs in the application of the ADR and ODR legislation | National research (H4) EU level interviews with trade organisations Case studies: desk review on cost in |
|--|--|--|--|

| Research question | Sub-questions | Methods | Data sources |
|---|---|---|--|
| traders of ADR and ODR versus the benefits generated? | providing ADR/ODR? | | sample of countries & interviews with trade organisations |
| | What are the benefits for traders in participating in ADR/ODR? | Qualitative feedback from traders on main benefits in the application of the ADR and ODR legislation Where possible: Monetisation of benefits for traders (e.g. cost savings if conflict was resolved in court) | |
| 10. How does the cost of ADR/ODR to traders compare with the costs of using other methods to resolve the dispute (courts, vouchers etc) ? | What are the costs of settling disputes without ADR/ODR in court by sector | Calculation of costs and monetisation of benefits (to the extent possible) for traders by resolving disputes in court | Consultations with expert panel + potential interview with EU scoreboard |
| | What are the costs of settling disputes without ADR/ODR out of court by sector (e.g. using vouchers or gifts) | Qualitative feedback from traders on main administrative burden/costs in not using ADR/ODR or courts to settle disputes Calculation of costs and monetisation of benefits (where possible) for traders by sector | EU level interviews with trade organisations Consultations with expert advisors |
| | What is the impact on the volume of disputes if ADR/ODR is not in place | Determine the volume of dispute resolution applications prior to ADR/ODR or in contexts without consumer access to ADR/ODR | Desk based research Consultations with expert advisors |
| c) Costs incurred by consumers as well as barriers faced by <u>consumers</u> in participating in ADR/ ODR | | | |
| 11. What is the balance of costs for | What are the costs for individual participation (fees, | Monetise the time and activities required for | |

| Research question | Sub-questions | Methods | Data sources |
|--|--|---|---|
| consumers: What is the cost burden for individual traders of ADR and ODR versus the benefits generated? | time, information gathering, appeal) What are the benefits for consumers in participating in ADR/ODR? | consumers to take part in ADR/ODR Qualitative feedback from consumer organisations on main benefits in the application of the ADR and ODR legislation Where possible: Monetisation of benefits for traders (e.g. money recovered, cost savings if conflict was resolved in court) | Online survey, section 2.4, Question 16 National research (H5) EU level interviews: consumer organisations Case studies: desk review on cost in sample of countries, interviews consumer organisations |

RQM Relevance

| Research question | Sub-questions | Methods | Indicative data sources |
|--|---|---|--|
| 12.To what extent did the scope and objectives of the ADR/ODR Directives remain relevant over the implementation period particularly in light of trends in | What trends can be identified in online shopping since 2013? What are the implications for the scope and objectives of the ADR /ODR legislation? | Analysis of the main trends in online shopping since 2013 (in particular the consolidation of major /main market players, online purchasing patterns and shopping online from third countries' marketplaces ¹⁶⁸) Analysis of consumer / trader preferences for ADR / ODR (e.g. growth / dominance of | EU level desk review: <i>Statistical data on e-commerce for individuals (including types of goods, shopping between EU countries, problems, main factors affecting online</i> |

¹⁶⁸ e.g. Alibaba's Tmall.

| | | | |
|--|---|--|---|
| online shopping (incl increase of non-EEA purchases)? | | in-house customer management systems of the main online marketplaces) Analysis of number of ADR and ODR disputes for non-EEA purchases | <i>purchases, by age group and country</i> ¹⁶⁹ <i>Statistical data on E-business integration ‘Customer relationship management’ and how this varies by country</i> ¹⁷⁰ <i>Quantitative research into consumer behaviour and e-commerce trends</i> ¹⁷¹ Case studies |
| 13.How well adapted are the ADR/ODR legislation to the main technological advances since 2013? | Do other private ODR systems exist at national level and what has been their take up? | Analysis of workings and scale of use of new legal tech companies providing ODR services, fees charged, promising a certain success rate, Analysis of advantages (e.g. cheap, fast) of new online solutions to ODR and any associated risks (e.g. lack of regulation / quality / access for certain ‘vulnerable groups’) Review of sample of private ODRs website in specific case study sectors | National research (I3 and M2) EU level desk review (Relevant sections of EU Consumer / trader association reports ¹⁷² , Justice Scorecard ¹⁷³ and general trends in digitization by country , Academic research / studies ¹⁷⁴ and Assembly 21 presentations ¹⁷⁵) OPC (Qu.9, possibly 10) |

¹⁶⁹ See E-commerce statistics for individuals - Statistics Explained (europa.eu)

¹⁷⁰ Enhancements include: “providing user-friendly mechanisms for receiving complaints, identifying potential problems before they occur, in general, by facilitating communication with the customer and by anticipating customer preferences. These technology-enabled improvements lead to long-term customer satisfaction and can ensure increased customer loyalty, decreasing marketing costs and increasing sales. The share of EU enterprises using CRM stood at 33 % and recorded a slight decline by 1 percentage point in 2019 compared to 2017” see E-business integration - Statistics Explained (europa.eu)

¹⁷¹ Ipsos study on the “evolution of shopper behaviour in 2020” evolution-shopper-behaviour-january2020.pdf (ipsos.com) and UNCTAD Report COVID-19 and e-commerce: a global review | UNCTAD

¹⁷² e.g. BEUC report – section 3.6 on ‘exploring the relevance and added value of new technologies for stepping up consumer protection’ beuc-x-2020-083_enforcement_mapping_report.pdf

¹⁷³ (data on use of technologies (artificial intelligence applications, chatbots) to facilitate submission and resolution of the disputes in court cases, see https://ec.europa.eu/info/sites/default/files/eu_justice_scoreboard_quantitative_factsheet_2021_en.pdf (figure 27)

¹⁷⁴ such as The Law of Consumer Redress in an Evolving Digital Market, by Pablo Cortés (on our Advisory Panel) The Law of Consumer Redress in an Evolving Digital Market - The Law of Consumer Redress in an Evolving Digital Market (cambridge.org)

¹⁷⁵ e.g. Breakout session 2: Is the ADR Directive fit for Digital markets? AND presentations from ADR FAIR, e.g. ConciliaWeb: Resolving electronic communications disputes Presentazione standard di PowerPoint (assets-cdn.io) from the 2021 Assembly

| | | | |
|--|---|--|---|
| | | | EU level interviews with consumer and trader organisations Case studies |
| 14. To what extent did external “disruptive” events (Covid) change the circumstances / need for ODR / ADR? | How has the Covid-19 pandemic affected the ADR / ODR landscape, and what are the main lessons learnt? | <p>Analysis of caseloads during pandemic (Q3 and 4) and factors driving trends (i.e. greater online shopping, scams/cases, issues with specific sectors – e.g. groceries, health, travel)</p> <p>Analysis of speed and experiences of moving ADR online (successes / costs / issues) during pandemic and implications for consumers / traders</p> <p>Analysis of whether traders were more interested to resolve their disputes through ADR or bilaterally in view COVID</p> <p>Analysis of main lessons learnt / specific issues / new questions raised¹⁷⁶</p> | <p>National research (I1 and I2, M1)</p> <p>EU level desk review (Relevant 2nd Alternative Dispute Resolution (ADR) Assembly 2021 presentations¹⁷⁷, Consumer Summit 2021¹⁷⁸, Reports / data on link between Covid and acceleration of digitisation of ADR¹⁷⁹)</p> <p>Online survey with ADR competent authorities (to collect data on case load as per EQ1)</p> <p>EU level interviews with consumer and trader organisations Case studies</p> |
| | To what extent have Commission actions helped mitigate the negative effects of these | Analysis of Commission responses / actions / notices | EU level desk review (Commission communications / notices on impact of Covid on consumer rights, enforcement issues / actions, etc. ¹⁸⁰ , |

¹⁷⁶ e.g. Who pays for governmental “evacuation flights” if re-routing by the air carrier was impossible?

¹⁷⁷ e.g., Facing pandemic challenges as an ADR in the travel sector, Christof Berlin (DE), Director, Folie 1 (assets-cdn.io)

¹⁷⁸ European Consumer Summit 2021 - Workshops (b2match.io)

¹⁷⁹ e.g. The Centre for Effective Dispute Resolution (CEDR) published its ninth Mediation Audit in May 2021. This report, which is based on a biennial survey of commercial (ie no consumer) mediators in the UK, noted that while only a very small number of mediations were held online prior to the pandemic (2%), the number of online mediations grew exponentially to 89%. The move to the online medium is also happening to courts and consumer ADR processes (e.g., in the Netherlands and elsewhere) in particular for holding preliminary meetings and hearings.

¹⁸⁰ e.g. European Commission Actions of the Consumer Protection Network on rogue traders during the COVID-19 outbreak Scams related to COVID-19 | European Commission (europa.eu)

| | | | |
|--|--|--|--|
| | disruptive events? | | minutes of meeting on Voucher Recommendation for travel ADRs with DG MOVE)) EU level interviews with DG JUST, trade and consumer organisations |
| 15.To what extent have consumer expectations changed in the past few years, and how has this impacted on their level of satisfaction with ADR/ODR? | How have consumer expectations changed in the past few years (for example regarding speed and cost of treatment of complaints and disputes)? | Analysis of opinions of consumer representatives and other experts | National research (I4, M3) EU level desk review (Consumer scoreboard) EU level interviews with consumer organisations OPC (responses from consumers and consumer organisations) |

RQM Shortcomings and lessons learnt

| Research question | Sub-questions | Methods | Indicative data sources |
|---|--|--|---|
| 16. What are the gaps or shortcomings that can be identified in the application of the ADR and ODR legislation? | <i>specific problem areas will include barriers to accessibility/use, efficiency and relevance, including the Directive's scope (B3), challenges faced in the accreditation procedure of ADR entities (i.e. quality requirements)(C8), challenges in increasing consumer and trader awareness, non binding/non</i> | Analysis of answers to RQs 1-15, and all stakeholder consultations, drawing out gaps and challenges. | <i>National research (B3, C8, F2 and F5, I5) Online survey, Part III</i> |

| | | | |
|---|---|--|---|
| | <i>enforceability (F2 and F5), lack of trader incentives to participate (K6), low success rate (K7), sustainability of the ADR system in light of high administrative burden and cost, functionality ODR (K10 and M5) shortcomings of ADR/ODR in digital era.</i> | | |
| 17. What are the lessons learnt from the application of the ADR and ODR legislation and what best practices and potential ways forward can be identified? | <i>Best practices and recommendations will include potential ways to improve accessibility/use, efficiency, and relevance of the ADR and ODR legislation</i> | Analysis of answers to RQs 1-15, and all stakeholder consultations, drawing out best practices and recommendations on ways to improve shortcomings identified. | <i>National research (I6 and M6) Online survey, Part III</i> |

ANNEX IV.A: AMENDMENTS TO THE NATIONAL LEGAL FRAMEWORKS IMPLEMENTING THE ADR DIRECTIVE¹⁸¹

| MS | Amendments |
|----|--|
| AT | <p>The Alternative Dispute Resolution Act (Alternative-Streitbeilegung-Gesetz - AStG) of 2015 was amended in 2018. The amendment was very limited in scope (only about Article 8 (2) and Article 31) and imposed limits on personal data processing by ADR and deleting of personal data after the procedure.</p> |
| BE | <p>An amendment to the implementing legislation (Act of 4 April 2014 on the Out-of-Court Resolution of Consumer Disputes) was made in 2015 specifying the conditions that the qualified ADR entities must meet (Arrêté royal du 16 février 2015 précisant les conditions auxquelles doit répondre l'entité qualifiée visée au livre XVI du Code de droit économique).</p> |
| CZ | <p>Some amendments to the legislation implementing the ADR Directive, (Act No 634/1992 Coll., on Consumer Protection, Act No 64/1986 Coll., on the Czech Trade Inspection, and Act No 229/2002 Coll., on the Financial Arbiter), but none in the areas covered by the ADR Directive.</p> |
| DE | <p>In 2019 the following changes were made to the Consumer Dispute Resolution Act (VSBG): requirements added to the operation of the conciliation body (e.g. separate entrance and premises from the association that runs ADR); added that the conciliation body can be specialised; more precise requirements added to the legal status of conciliation bodies (consumer association, business association); amendment of the competence and procedure of the Federal Universal Arbitration Board and relevant fees; amendment on the withdrawal of recognition of a conciliation body if it does not fulfil requirements.</p> |
| EE | <p>The Consumer Protection Act was amended to improve the procedure of the Consumer Disputes Commission to enable faster, easier, and more efficient resolution of disputes. The division of competencies between the various supervisory authorities regarding food supervision was clarified. The rates of penalties provided for in the Consumer Protection Act were also harmonized with penalties for misdemeanours of a similar nature provided for in the Advertising Act.</p> |
| FI | <p>Acts no. 441/2002 and 441/2002 were amended to meet the requirements set in the ADR Directive concerning for example processing times. Act no. 38/1978 was amended to fulfil the obligation of the trader to provide information to consumers about ADR entities.</p> |
| FR | <p>The Consumer Code was amended on the legislative part in 2016 by the Order No. 2016-301. The Order was adopted based on Article 161(I) of the Consumer Act of 17 March 2014, in order, according to the Government, to improve the intelligibility and</p> |

¹⁸¹ Data provided by the ADR Competent Authorities to the external contractor conducting the ADR data collection study in 2022.

accessibility of the law for various users (Article 1 of the bill). The main aim was to organise and restore consistency to all the provisions of the Consumer Code, to improve understanding of and access to the law for its various users.

HR The Law on Alternative Resolution of Consumer Disputes was amended in 2019, but the small amendments have not substantially changed the text of the Law.

There were two major amendments:

In 2015, the compulsory cooperation for traders in the ADR procedure was introduced. The trader is required to respond to the letter of the ADR body, which invites it into the procedure to represent its interest or do the same via a representative.
HU Additionally, if an official procedure initiated against the trader by the Consumer Protection Authority and the trader does not participate, fines are imposed, and the name of trader will be publicized as a bad reputation (blacklist).
In 2019, the accreditation of the members of the ADR bodies was changed to improve transparency of the selection procedure (open application).

IE There was an amendment to S.I. Nos 368/2015 regarding the steps for cooperation between ADR entities and National Authorities.

IS Act No. 19/2021, on amendments to various laws, including the ADR Act. The purpose of the amendments in question was to make certain procedural matters stemming from the ADR Act clearer on dismissal of cases by ADR entities.

LI Act of 4 October 2018 on the Amendment of the Alternative Dispute Resolution Act, amended AStG (implementing legislation), to bring it in compliance with the GDPR.

LT Amendments were made to the implementing laws. Since 2015, in accordance with the CPL, if this and/or other laws implementing a legal act of the European Union on ADR contradict each other, the norms of the CPL shall apply, unless the specific law does not provide otherwise. Before 2015 the CPL did not establish a relationship with other laws implementing EU Law. Since 2015 the provision on the application of the CPL to international consumer disputes has been established (Article 19 (1) of the CPL) and the peculiarities of resolving international consumer disputes (Article 293 of the CPL)

MT Amendments were made stating that ADR officers in charge of ADR shall be appointed by the Minister and cannot be appointed unless they hold a warrant and have practiced for a period of at least five years. This was introduced to ensure independence.

NL In 2018, one amendment was made to the Implementation Act clarifying that additional national accreditation requirements can be imposed by governmental decree (art. 17 (4) Implementation Act). Hence, no legislative amendments to the implementation legislation are required to set additional accreditation requirements.

NO Minor amendments concerning the accreditation of ADR bodies and the role of the Consumer Authority (Forbrukertilsynet), the residual ADR body were made in accordance with the updated Law on the processing of consumer complaints in the

Norwegian Consumer Agency and the Consumer Complaints Committee (Consumer Complaints Act).

PT Small changes were made to the legislation approved in 2015. Amendments introduced were related to the (i) competences of the regulatory authorities in the field of essential public services (water and electricity); (ii) clarification of the powers of the Portuguese contact point (Direção-Geral do Consumidor); (iii) financial support given to ADR and ADR's created by local authorities; (iv) supervision.

RO GO 38/2015 was amended in 2017, by the Emergency Government Ordinance no. 75/2017 regarding the amendment of GO 38/2015. The amendment of GO 38/2015 concerned the modification of the competent authority under the ADR Directive. The competent authority was modified from the Ministry of Energy, Small and Medium Enterprises and Business Environment to the Ministry of Economy. Even though the updated version of the Go 38/2015 still refers to the Ministry of Economy, today, the Ministry of Energy is the ADR competent authority in Romania.

SE Changes to the ARN, an administrative authority and board for alternative dispute resolution whose activities are regulated by the ordinance (2007: 1041), in order for such authority to be able to live up to all the requirements of the Directive were made. Specifically, certain subject areas were added to ARN's competence and a provision on the aspect that disputes shall, as a general rule, be settled within 90 days from the time a case is ready for decision and that certain existing rules be clarified.

SK Act of 5 December 2018 amending Act No. 371/2014 Coll. on Resolving Crisis Situations in the Financial Market and on Amendments to Certain Acts, and Act 177/2018 Coll. of 15 May 2018 led to the amendments of the ADR Act. The changes relate to the definition of a consumer; types of documents to be submitted with a request to be included in the list of ADR entities; proof of integrity of natural persons leading ADR; and rights and obligations of the subjects of ADR (i.e., ADR entities).

ANNEX IV.B: STATISTICS ON ADR DISPUTES (2018-2021)

ADR complaints and disputes received by ADR entities (before the admissibility check in line with Article 5(4) ADR directive) between 2018 and 2021, as reported by Member States, Norway and Iceland

| | 2018 | 2019 | 2020 | 2021 | Total (2018-2021) |
|------------|-------------|-------------|-------------|-------------|--------------------------|
| Austria | 8 428 | 8 748 | 9 723 | 7 699 | 34 598 |
| Belgium | 46 682 | 47 195 | 49 637 | No data | 143 514 |
| Bulgaria | 310 | 286 | 293 | 374 | 1 263 |
| Croatia | 35 | 321 | 75 | 223 | 654 |
| Cyprus | 310 | 310 | 1 010 | 1 010 | 2 640 |
| Czechia | 5 531 | 5 278 | 5 650 | 6 198 | 22 657 |
| Denmark | 5 700 | 7 229 | 9 526 | 7 268 | 29 723 |
| Estonia | 3 715 | 2 667 | 3 055 | 3 087 | 12 524 |
| Finland | 7 813 | 8 327 | 8 197 | 6 972 | 31 309 |
| France | No data | No data | 168 413 | No data | 168 413 |
| Germany | 88 196 | 78 533 | 100 349 | 83 997 | 351 075 |
| Greece | 11 167 | 12 461 | 14 365 | 13 008 | 51 001 |
| Hungary | 16 365 | 13 896 | 13 110 | 12 992 | 56 363 |
| Iceland | 0 | 0 | 261 | 287 | 548 |
| Ireland | 6 034 | 5 648 | 5 680 | 4 968 | 22 330 |
| Italy | 72 911 | 73 064 | 75 999 | 65 878 | 287 852 |
| Latvia | 416 | 526 | 577 | 558 | 2 077 |
| Lithuania | 6 147 | 6 360 | 8 595 | 9 215 | 30 317 |
| Luxembourg | 1 279 | 1 677 | 2 335 | 527 | 5 818 |
| Malta | No data | No data | No data | No data | No data |
| Norway | 26 401 | 27 470 | 29 031 | 23 055 | 105 957 |
| Poland | 18 123 | 19 924 | 15 688 | 28 448 | 82 183 |
| Portugal | 11 140 | 9 757 | 11 780 | 11 011 | 43 688 |
| Romania | 232 | 522 | 584 | No data | 1 338 |
| Slovakia | 584 | 515 | 532 | 494 | 2 125 |
| Slovenia | 295 | 270 | 275 | 256 | 1 096 |
| Spain | 47 554 | 56 781 | 66 869 | 57 670 | 228 874 |
| Sweden | 19 225 | 22 740 | 29 857 | 21 525 | 93 347 |

Number of complaints refused by ADR entities (considered outside of admissibility criteria)

| | 2018 | 2019 | 2020 | 2021 | Total (2018-2021) |
|-------------|-------------|-------------|-------------|-------------|--------------------------|
| Austria | 2 074 | 2 373 | 2 483 | 1 845 | 8 775 |
| Belgium | 15 950 | 17 953 | 20 486 | No data | 54 389 |
| Bulgaria | 19 | 42 | 38 | 60 | 159 |
| Croatia | No data | 118 | 25 | 22 | 165 |
| Cyprus | 250 | 250 | 520 | 520 | 1 540 |
| Czechia | 1 460 | 1 508 | 1 825 | 1 624 | 6 417 |
| Denmark | 524 | 629 | 618 | 833 | 2 604 |
| Estonia | 482 | 446 | 149 | 251 | 1 328 |
| Finland | 738 | 572 | 487 | 615 | 2 412 |
| France | No data | 77 919 | 89 021 | No data | 166 940 |
| Germany | 17 618 | 17 240 | 14 391 | 16 512 | 65 761 |
| Greece | 2 157 | 2 650 | 3 719 | 2 943 | 11 469 |
| Hungary | 2 771 | 2 460 | 2 646 | 2 540 | 10 417 |
| Iceland | 0 | 0 | No data | No data | 0 |
| Ireland | 129 | 262 | 505 | 189 | 1 085 |
| Italy | 3 688 | 3 790 | 3 500 | 3 669 | 14 647 |
| Latvia | 8 | 6 | 17 | 7 | 38 |
| Lithuania | 1 193 | 1 314 | 2 301 | 3 165 | 7 973 |
| Luxembourg | 164 | 202 | 275 | 15 | 656 |
| Malta | No data | No data | No data | No data | No data |
| Netherlands | 4 073 | 4 553 | 4 404 | 3 294 | 16 324 |
| Norway | 1 057 | 1 037 | 1 355 | 1 407 | 4 856 |
| Poland | 436 | 774 | 1 861 | 7 327 | 10 398 |
| Portugal | 1 320 | 851 | 862 | 637 | 3 670 |
| Romania | No data | No data | No data | No data | No data |
| Slovakia | 196 | 168 | 137 | 143 | 644 |
| Slovenia | 8 | 4 | 5 | 4 | 21 |
| Spain | 1 879 | 1 789 | 3 584 | 2 442 | 9 694 |
| Sweden | 4 930 | 6 096 | 7 050 | 6 176 | 24 252 |

Proportion of ADR complaints refused by ADR entity

| Percentage of complaints refused based on Article5(4) ADR Directive (ie, inadmissible), per year per Member State | | | | Average refusal rate for the period of 2019-2021 (based on Article5(4) ADR Directive), per Member State |
|---|-------------------|---------|---------|---|
| | 2019 | 2020 | 2021 | |
| Austria | 30% | 27% | 26% | 28% |
| Belgium | 38% | 42% | No data | 40% |
| Bulgaria | 15% | 13% | 16% | 15% |
| Croatia | 37% | 34% | No data | 35% |
| Cyprus | 81% | 51% | 51% | 61% |
| Czechia | 40% | 43% | 37% | 40% |
| Denmark | 9% | 7% | 13% | 10% |
| Estonia | 19% | 5% | 10% | 11% |
| Finland | 7% | 6% | 10% | 8% |
| France | No data | No data | No data | No data |
| Germany | 23% | 15% | 21% | 20% |
| Greece | 22% | 27% | 23% | 24% |
| Hungary | 20% | 23% | 22% | 22% |
| Iceland | 0% ¹⁸² | No data | No data | No data |
| Ireland | 5% | 10% | 4% | 6% |
| Italy | 5% | 5% | 6% | 5% |
| Latvia | 1% | 3% | 1% | 2% |
| Lithuania | 21% | 28% | 36% | 28% |
| Netherlands | 24% | 23% | 18% | 22% |
| Norway | 4% | 5% | 7% | 6% |
| Poland | 4% | 12% | 26% | 14% |
| Portugal | 10% | 8% | 6% | 8% |
| Romania | No data | No data | No data | No data |

¹⁸² Zero cases were submitted/launched in Iceland in 2019.

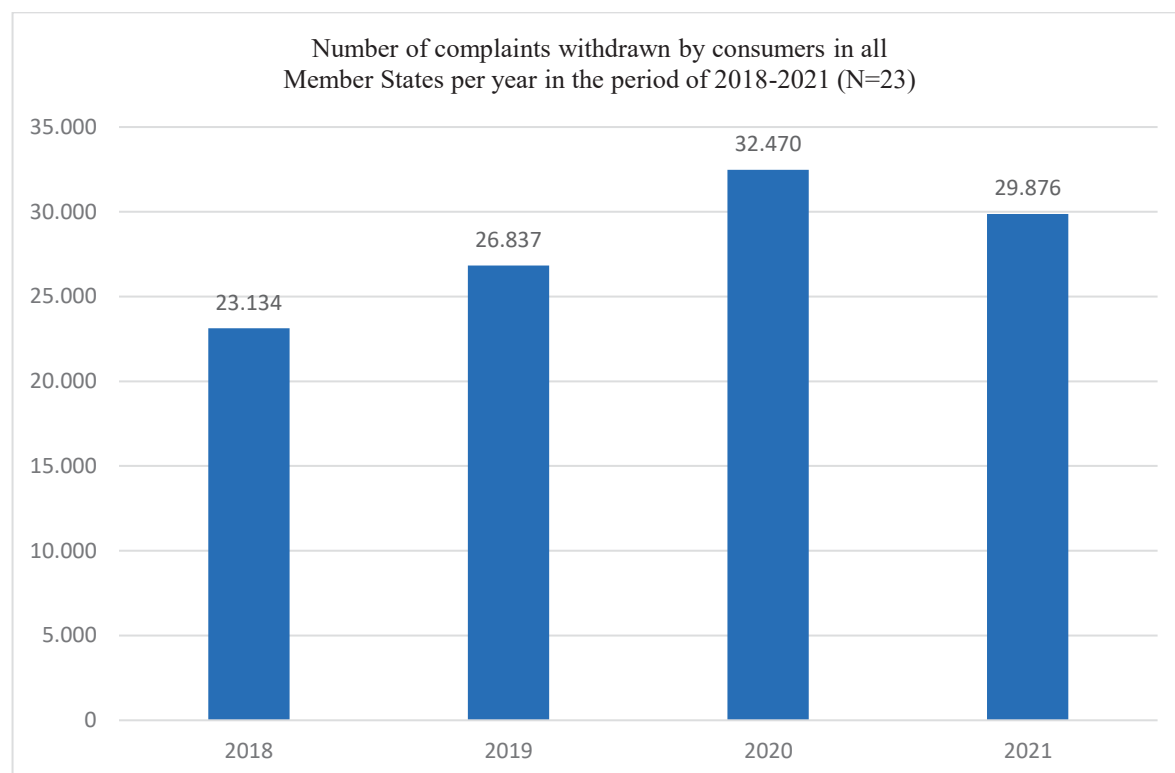
| | | | | |
|-------------------|---------|---------|---------|---------|
| Slovakia | 34% | 27% | 31% | 31% |
| Slovenia | 2% | 2% | 2% | 2% |
| Spain | 3% | 6% | 4% | 5% |
| Sweden | 34% | 30% | 37% | 34% |
| Luxembourg | 12% | 12% | 3% | 9% |
| Malta | No data | No data | No data | No data |

Number of disputes launched (accepted for handling by ADR entities)

| | 2018 | 2019 | 2020 | 2021 | Total (2018-2021) |
|------------------------|-------------|-------------|-------------|-------------|--------------------------|
| Austria | 6 354 | 6 375 | 7 240 | 5 854 | 25 823 |
| Belgium | 25 663 | 24 875 | 24 157 | No data | 74 695 |
| Bulgaria | 291 | 244 | 254 | 314 | 1 103 |
| Croatia | 35 | 202 | 49 | 201 | 487 |
| Cyprus | 60 | 60 | 525 | 525 | 1 170 |
| Czechia | 4 945 | 4 255 | 3 959 | 4 548 | 17 707 |
| Denmark | 4 628 | 6 024 | 8 096 | 5 696 | 24 444 |
| Estonia | 3 024 | 1 917 | 2 634 | 2 365 | 9 940 |
| Finland | 7 014 | 7 691 | 7 653 | 6 323 | 28 681 |
| France | No data | 62 441 | 67 291 | No data | 129 732 |
| Germany | 66 122 | 56 435 | 80 593 | 60 806 | 263 956 |
| Greece | 8 790 | 9 532 | 10 220 | 9 615 | 38 157 |
| Hungary | 9 819 | 7 685 | 9 986 | 9 766 | 37 256 |
| Iceland | 0 | 0 | No data | No data | 0 |
| Ireland | 5 651 | 5 180 | 4 741 | 4 506 | 20 078 |
| Italy | 66 765 | 66 341 | 69 382 | 60 710 | 263 198 |
| Latvia | No data | No data | No data | No data | No data |
| Lithuania | 4 937 | 5 043 | 6 277 | 5 998 | 22 255 |
| Luxembourg | 1 043 | 1 263 | 1 846 | 432 | 4 584 |
| Malta | No data | No data | No data | 5 | 5 |
| Netherlands | 16 464 | 16 955 | 18 869 | 17 844 | 70 132 |
| Norway | 19 153 | 19 792 | 20 042 | 18 167 | 77 154 |
| Poland | 17 687 | 19 150 | 13 827 | 21 121 | 71 785 |
| Portugal | 8 934 | 8 213 | 9 968 | 9 259 | 36 374 |
| Romania ¹⁸³ | 232 | 522 | 584 | No data | 1 338 |
| Slovakia | 374 | 327 | 365 | 320 | 1 386 |
| Slovenia | 225 | 226 | 231 | 214 | 896 |
| Spain | 35 871 | 38 509 | 47 746 | 41 270 | 163 396 |
| Sweden | 10 000 | 12 000 | 16 000 | 10 000 | 48 000 |

¹⁸³ Data for Romania for 2020 only includes the first semester.

Number of complaints withdrawn by consumers, per year



The Member States with the highest number of complaints withdrawn by consumers were Germany and Sweden. Germany was also the highest in terms of the number of complaints received (before the admissibility check). Latvia, Romania,¹⁸⁴ Bulgaria, Croatia and Iceland had very few complaints withdrawn by consumers throughout 2018-2021.

Success rate (%)¹⁸⁵, rounded

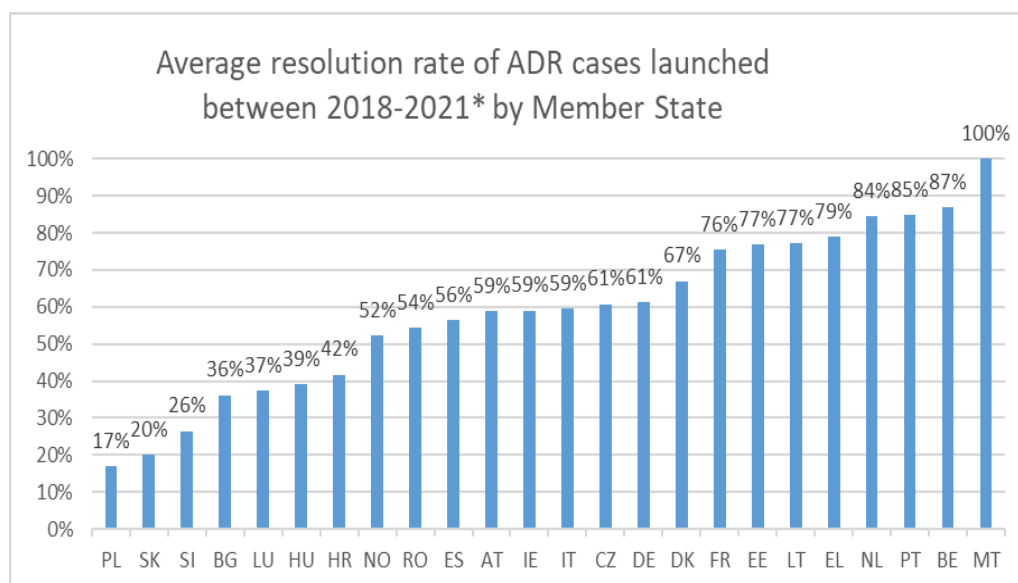
| | 2018 | 2019 | 2020 | 2021 | 2018-2021 |
|-----------------------------|---------|---------|----------------|----------------|-----------------------|
| Austria | 53.48% | 59.15% | 63.33% | Incorrect data | 58.86.% |
| Belgium | 91.02% | 84.47% | 85.05% | No data | 86.91% |
| Bulgaria | 28.18% | 45.49% | 30.71% | 40.76% | 36.17% |
| Croatia | 2.86% | 36.14% | 44.90% | 53.23% | 41.68% |
| Cyprus¹⁸⁶ | No data | No data | No data | No data | No data |
| Czechia | 58.24% | 64.37% | 65.04% | 56.31% | 60.74% |
| Denmark | 79.17% | 63.00% | 48.68% | 89.22% | 67.43% |
| Estonia | 63.36% | 99.01% | 67.84% | 86.51% | 76.93% |
| Finland | 97.50% | 96.83% | Incorrect data | Incorrect data | Incorrect data |

¹⁸⁴ However, that data for Romania was provided only for the year 2020.

¹⁸⁵ Data from three Member States (AT, FI, NL) for 2021 will need to be clarified, as the number of resolved cases was reported as higher than the number of cases handled for some of the years. In addition the very low success rate for PL needs to be verified as well.

¹⁸⁶ While data is available for Cyprus for the number of launched disputes between 2018-2021, the numbers are the exact same for 2018-2019 and for 2020-2021, therefore, perhaps, not very reliable. In any case, the success rate could not be calculated as no data is available for the number of resolved disputes.

| | | | | | |
|-----------------------------|----------------------|----------------------|------------------------|----------------|----------------|
| France | No data | 76.06% | 75.04% | No data | 75.53% |
| Germany | 52.25% | 77.74% | 56.75% | 62.00% | 61.32% |
| Greece | 82.58% | 80.53% | 82.51% | 70.61% | 79.03% |
| Hungary | 36.50% | 40.79% | 38.80% | 40.64% | 39.09% |
| Iceland | 0.00% ¹⁸⁷ | 0.00% ¹⁸⁸ | No data ¹⁸⁹ | No data | No data |
| Ireland | 47.32% | 52.24% | 78.68% | 60.70% | 58.99% |
| Italy | 62.38% | 65.06% | 52.59% | 57.87% | 59.43% |
| Latvia¹⁹⁰ | No data | No data | No data | No data | No data |
| Lithuania | 82.32% | 75.03% | 74.88% | 77.06% | 77.15% |
| Luxembourg | 61.55% | 14.96% | 33.48% | 60.65% | 37.33% |
| Malta | No data | No data | No data | 100.00% | No data |
| Netherlands | 79.66% | 96.67% | 77.69% | Incorrect data | 84.47% |
| Norway | 57.07% | 53.03% | 49.95% | 49.47% | 52.39% |
| Poland | 58.83% | 2.15% | 3.12% | 3.93% | 16.82% |
| Portugal | 88.92% | 84.44% | 80.70% | 85.35% | 84.75% |
| Romania | 75.43% | 60.34% | 40.58% ¹⁹¹ | No data | 54.33% |
| Slovakia | 25.40% | 21.41% | 17.53% | 15.00% | 19.99% |
| Slovenia | 32.00% | 29.20% | 21.65% | 22.90% | 26.45% |
| Spain | 58.24% | 58.42% | 54.23% | 55.34% | 56.38% |
| Sweden¹⁹² | No data | No data | No data | No data | No data |



Note: Data for 3 Member States only covered some of the years: BE (based on data 2018-2021), FR (based on data 2019 and 2020), and RO (based on data 2018-2020).

¹⁸⁷ In 2018, zero cases were launched in Iceland.

¹⁸⁸ In 2019, zero cases were launched in Iceland.

¹⁸⁹ While data is available for Iceland on the number of resolved disputes in 2019, no data is available for the number of launched disputes.

¹⁹⁰ While data is available for Latvia on the number of resolved disputes in 2018-2021, no data is available for the number of launched disputes.

¹⁹¹ Data provided for Romania for 2020 includes only the first semester of the year.

¹⁹² While data is available for Sweden on the number of launched disputes in 2018-2021, no data is available for the number of resolved disputes.

ADR disputes that were subjected to judicial review (per Member State that provided data)

| | 2019 | 2020 | 2021 | Total |
|-------------|-------------|-------------|-------------|--------------|
| Bulgaria | 0 | 0 | 0 | 0 |
| Czechia | 266 | 128 | 67 | 461 |
| Ireland | 10 | 17 | 19 | 46 |
| Lithuania | 57 | 62 | 61 | 180 |
| Netherlands | | | | 380 |
| Romania | 43 | 23 | No data | 66 |
| Spain | 6 | 9 | 21 | 36 |

ADR funding models (as self-reported by ADR competent authorities)

| Country | Comments |
|----------|---|
| Austria | <p>Telecommunication and postal services: ADR entities are financed partly by the public authorities and partly by the participants in the market.</p> <p>Energy: partly financed by a budget it is entitled to by law for the fulfilment of regulatory tasks, which is partly funded by the public authorities and partly by all electricity and gas consumers.</p> <p>Transport: funded partly by the public authority, partly by the transport companies involved.</p> <p>e-commerce: financially supported partly by the ministry responsible for Consumer Protection and partly by the Chamber of Labour.</p> <p>Residual ADR entity: partly funded by membership fees and the Federal Ministry of Labour, Social Affairs and Consumer Protection supports it financially.</p> <p>Two ADR entities are financed by traders (banking ADR entity by the banking associations, and ADR entity dealing with complaints concerning prefabricated houses by the manufacturers).</p> <p>No ADR entity has a profit character. In the case of ADR entities with private funding, the financing serves exclusively to maintain its operation.</p> |
| Belgium | <p>Most ADR entities are funded by professional federations of traders. Two ADR entities receive a subsidy from the government.</p> |
| Bulgaria | <p>15 are financed from the state budget. The other two are privately funded, they charge a symbolic fee to traders when dealing with consumer disputes, but companies can also join as members, which gives them access to more services.</p> |
| Croatia | <p>Consumers need to pay a fee, which varies from one ADR entity to the other. It is not specified whether all ADR entities charge a fee. However, considering that the competent authority reports private funding as the only means of funding and the ADR entities are for-profit only, it can be assumed that all charge a fee.</p> |
| Cyprus | <p>Public ADR entities are publicly funded while private ADR entities are privately funded.</p> |
| Czechia | <p>The four ADR entities established by law have a public funding model. The other three are professional chambers with compulsory membership.</p> |
| Denmark | <p>The trade associations behind the individual ADR entities pay for the dispute. If the consumer is successful, however, the ADR entities may have statutory provisions where they can charge fees to the trader.</p> <p>The residual entity is largely financed by the public sector.</p> <p>The private ADR entities must not operate for profit, which is why there are rules for how high fees they can charge. The ADR entities may not impose a higher fee on the trader than their average cost per dispute.</p> |

| | |
|---------|---|
| Estonia | <p>The expenses of the Consumer Appeal Board are fully covered by the state budget. It is established based on law, which operates as a sub-agency of the Ministry of Economic Affairs and Communications, the Consumer Protection and Technical Regulatory Authority.</p> <p>The expenses of the two insurance entities involved in insurance are covered by the budget of the Estonian Motor Insurance Fund and the Association of Estonian Insurance Companies, and the expenses of the Court of Honour of the Estonian Bar Association are covered by the budget of the Bar Association, respectively. Thus, traders contribute indirectly to the financing of dispute resolution through membership fees of the respective organisations.</p> <p>ADR entities operate as non-profit organisations.</p> |
| Finland | <p>Two ADR entities are based on public funding, and one is on private funding.</p> |
| France | <p>The three public ADR entities are financed by public funds, and the other ADR entities are financed by professionals or federations of professionals – traders bear the costs.</p> <p>Some ADR entities are non-profit (public mediators, associations of mediators), and others have a commercial vocation.</p> |
| Germany | <p>Two entities are financed exclusively by lump sums. Nine of the ADR entities organised under private law are financed exclusively by membership fees. Nine of the ADE entities organised under private law opted for mixed financing between membership fees on the one hand and the collection of lump sums on the other. One ADR entity has been receiving a loan from the Federal Office of Justice since 1 January 2020.</p> <p>An ADR entity organised under private law must be supported by a registered association. It may also be financed by an association representing the interests of traders or consumers or by one or more traders. In this case, the ADR entity must have its own earmarked and sufficient budget, which is separate from the budget of the institution.</p> |
| Greece | <p>One ADR entity receives public funding whereas the remaining three ADR entities are private funding.</p> <p>Moreover, ADR entities may apply for grants from the European Commission's Consumer Programme to improve their operational capacity in resolving consumer disputes, develop the networking of national ADR, and promote monitoring activities on the functioning and the effectiveness of dispute resolution.</p> |
| Hungary | <p>All operate entirely using public resources.</p> |
| Iceland | <p>Public ADR entities, established by law, are publicly funded. Private ADR entities, established by consumer and trade associations, are most often privately funded. Some private ADR entities have partial public funding.</p> |
| Ireland | <p>The CRU is financed by means of a levy on regulated entities and the FSPO is funded by levies on financial services providers and by a government</p> |

grant. The other two listed entities are primarily funded through private financing.

Both the FSPO and CRU are independent statutory bodies run on a not-for-profit basis. NetNeutrals is a private entity with a profit character.

| | |
|-------------|---|
| Italy | <p>In some joint negotiations, there is a small financial contribution to be paid by the companies.</p> <p>The purpose of the procedure is not to enrich the ADR entity, but to bring the dispute that has arisen between the trader and the consumer to a quick conclusion.</p> |
| Latvia | No information |
| Lithuania | All ADR entities are public authorities, and the state budget covers their costs. |
| Luxembourg | The residual ADR entity is financed by public funding while the others function through private funding. |
| Malta | <p>The majority are private, but the residual ADR is public-funded.</p> <p>Only one ADR entity has a profit.</p> |
| Netherlands | <p>SGC: Traders bear the costs of the substantive handling of disputes. SGC receives a subsidy from the Ministry of Justice and Security for part of the overhead costs.</p> <p>HC: It is partly financed by the Ministry of the Interior and Kingdom Relations, a sector contribution and partly by administrative costs paid by the losing party.</p> <p>Kifid: The affiliated financial service providers bear the costs.</p> <p>SKGZ: The (statutory) affiliated health insurers bear the costs. They pay according to market share. The total amount to be paid is determined annually by the Minister of Finance.</p> <p>SGC, Kifid and SKGZ have the legal form of a foundation, with profit not intended. HC is an independent administrative body, so profit is not intended either.</p> |
| Norway | Two ADR entities are publicly funded, while the rest is privately funded. |
| Poland | ADR entities established by public institutions are financed from the state budget and have a not-for-profit character. Private ADR entities set up by trader associations are funded by membership fees and have a profit character. |
| Portugal | <p>The funding is mostly public: Ministry of Justice budget, four regulatory entities, local associated Municipalities, a regional Government budget (in one case).</p> <p>Other sources: Funding through a Consumer Fund under the responsibility of the Consumer Directorate-General (annual application – projects from the ADR entities are presented to a technical commission); a small minority of business associations and one consumer association help funding.</p> |

| | |
|----------|--|
| Romania | No information |
| Slovakia | Some ADR entities are state authorities (including the residual ADR entity), financed from the state budget. Others are consumer and interest associations of legal entities, financed with their own resources. The Ministry of Economy annually allocates funds to support ADR in the form of subventions. |
| Slovenia | Traders bear the costs. Lawyers are for profit (at the bar rate). For non-profit organisations financed by grants, state funds, part of income tax, profits may not be shared or paid out, but can only be used to develop or expand activities. |
| Spain | Some public ADR entities are financed with public funds and not for profit, others are private and financed with private funds (traders bear the costs) and can be for-profit. |
| Sweden | One ADR entity is a public authority and thus state-funded, while the other six consist of industry boards that are privately funded. None of the ADR entities conducts for-profit activities. |

ADR fees or charges to consumers, per Member State

| Member State | Fees/charges to consumers |
|--------------|---|
| Austria | For consumers, free of charge. For ADR procedures before the ADR body dealing with complaints in the travelling sector, participating companies have to pay a fee of € 78,- per opened procedure. This fee has not increased since 2015. |
| Belgium | Only 4 of the 15 entities ask the consumer to pay a fee, but there is a wide variation in the sum to be paid by the consumer, going from EUR 40 over EUR 80 and up to even EUR 332. |
| Bulgaria | Free of charge for consumers |
| Croatia | It is the same from 2018. and it is 500 HRK/66 EUR |
| Cyprus | EUR 20 - 640. No increase through the years. |
| Czechia | Out-of-court dispute resolution is not charged in the Czech Republic. Only at the commencement of a dispute with ČTÚ the consumer will pay an administrative fee (approximately CZK 250). |
| Denmark | Consumers must pay a symbolic amount to complain. The amount is between 75 and 400 kr. For some Appeals Boards, there has been an increase in the fee, as the Appeals Boards have wanted the complaint fee to be aligned with the residual body (Consumer Complaints Board), as well as the general price increases in society. |
| Estonia | Procedures are free of charge for consumers |
| Finland | No fees |

| | |
|---------|---|
| France | <p>Free of charge for the consumer. However, the consumer shall be responsible for:</p> <ul style="list-style-type: none"> - Representation costs if the consumer wishes to be represented by a lawyer or a third party who would ask him for remuneration in that capacity; the consumer may also be assisted by a consumer association —Expert fees if the consumer wishes, during the mediation process, to use an expert's expertise; the expert's costs may be shared with the trader if both parties have agreed to use an expert. |
| Germany | The ADR procedures are in principle free of charge for consumers. Only in cases of misuse of the AS steles will a small fee of EUR 30 be charged. |
| Greece | For consumers is free of charge in Greece. |
| Hungary | The use of alternative dispute resolution in Hungary has been and is free of charge in the past and in the present day. |
| Iceland | Small case handling fee for most ADR bodies. Fees have not increased since 2020. |
| Ireland | Both the CRU and the FSPO provide their services to consumers free of charge. Net Neutrals also provide free services to consumers but charge traders EUR 100 for an ecommerce case and apply other charges for timeshare and domain name disputes. Their charges have not changed since 2018. RIAI charge consumers a EUR 50 fee for their services. |
| Italy | <p>MISE:</p> <p>Avellino's chamber of commerce EUR 30 (for disputes up to EUR 50.000) or EUR 60 (for disputes above EUR 50.000); no variation</p> <p>Bari's Chamber of commerce EUR 30, no variation</p> <p>Bolzano's Chamber of commerce EUR 30, no variation</p> <p>Cagliari-Oristano's chamber of commerce EUR 30, no variation</p> <p>Cosenza's Chamber of commerce EUR 30, no variation</p> <p>Piacenza's Chamber of commerce EUR 30 (for disputes up to EUR 50.000) or EUR 60 (for disputes above EUR 50.000); no variation</p> <p>Trenitalia Free</p> <p>Trenord Free</p> <p>Poste /</p> <p>AGCOM: /</p> <p>ARERA:</p> <p>The ARERA Conciliation Service and the procedures known as "paritetiche" are completely free for consumers; the other ADR entities listed by ARERA apply indemnities for consumers in line with those established by the Ministry of Economic Development (single point of contact or ADR) coordination table (a maximum of EUR 30.00 for disputes up to EUR 50,000.00; a maximum of EUR 60.00 for disputes over EUR 50,000.00).</p> |

| | |
|-------------|---|
| | <p>CONSOB: The ACF is free for consumers</p> <p>BANCA D'ITALIA: Filing a complaint with the ABF has a very low cost: a fee of only 20 euros is required, which is refunded by the intermediary if the decision is upheld, even if only in part. The contribution to the costs of the procedure of 20 euros has remained stable since 2009, the year in which the ABF was set up.</p> |
| Latvia | In general, out of court dispute resolution is free of charge. Two ADR bodies request to pay security deposit, which is refunded, if claim is justified. The procedure has not changed since 2018. |
| Lithuania | ADR is free of charge for consumers. |
| Luxembourg | All the ADR bodies in Luxemburg offer their service for free. |
| Malta | No answer provided |
| Netherlands | <p>SGC: the amount of complaint to the 50 dispute resolution boards varies, but is generally a low financial threshold (between EUR 21,50 and EUR 127,50). If the complaint is upheld in part or in full by the committee, it is regulated that the trader should reimburse the consumer for the amount of the complaint. In the case of an unfounded complaint, the consumer loses the paid complaint fee.</p> <p>HC: tenants pay an advance of EUR 25, which is (partially) reimbursed in the event of a (partly) well-founded claim. There is a possibility to apply for exemption on the basis of a low income for the payment of the advance. These costs have remained unchanged since 2018.</p> <p>KIFID: The complaint to the Dispute Settlement Committee is free of charge for consumers. If a consumer appeals against a decision to the Appeals Board, he must pay a fee of EUR 500 for the appeal procedure; if the appeal is well founded, the Appeals Board may decide that the consumer's contribution must be reimbursed by the financial service provider.</p> <p>SKGZ; Mediation by the Ombudsman Zorgverzekeringen is free of charge. An entry fee of EUR 37,00 applies to proceedings before the Dispute Settlement Committee. That amount has not changed since 2018.</p> |
| Norway | A minority of the ADR entities require a small fee from the consumers. |
| Poland | No answer provided. |
| Portugal | No fees or just moderate file taxes are charged during the complaint procedure. |

| | |
|----------|---|
| | Only 4 entities have fees. In 2 of them 10 euros per mediation. In the two other entities depends on the value of the damage. |
| Romania | The procedure is free for consumers. |
| Slovakia | ADR entities which are eligible legal persons (consumer associations and business associations of legal persons) may request from the consumer a fee for the commencement of ADR of an amount which may not exceed EUR 5, inclusive of VAT, if the authorised legal persons referred to in their ADR rules. Currently, there is only one ADR entity in the Slovak Republic, which is covered by its rules. Other ADR entities shall conduct ADR free of charge. ADR entities which are state bodies shall always conduct ADR free of charge. There have been no changes in the Slovak legislation since 2018. |
| Slovenia | The costs of the ADR procedure shall be borne by the trader/provider. The procedure shall be free of charge for the consumer, with the exception of a fee which may be fixed by the IRPS provider/ADR entity and shall not exceed EUR 20. The consumer shall bear the costs of his delegate or third party, if any, and the costs of the expert opinion requested by the consumer if the IRPS provider/ADR entity considers that the dispute can be settled without it. These costs are the same from 2018. |
| Spain | Free for consumers. |
| Sweden | Only one (the Swedish Bar Association's Consumer Dispute Board) of the seven approved boards in Sweden charges a fee for dealing with a dispute. That fee is SEK 100 and has not been increased or reduced since 2018. |

| MS | Type of monitoring |
|----|---|
| AT | <p>Annual activity reports</p> <p>The contact point at the Federal Ministry for Social Affairs, Health, Care and Consumer Protection is responsible for monitoring the compliance of the ADR entities with the ADR Directive. The monitoring is conducted annually via the control of the annual reports from the ADR bodies. Under Article 9 AStG, the ADR bodies must submit and publish an annual activity report containing certain minimum information listed in the same Article. They also contain evidence (i.e. documents and proof of qualifications).</p> |
| BE | <p>Other monitoring mechanisms</p> <p>The Economic Inspection monitors the ADR entities through audits, assessing whether the entities are complying with the legal requirements in practice. The Economic Inspection holds two types of audits per year: mini-audits (reduced audits of all qualified entities) and at least two thorough audits of qualified entities each year. Detailed audits are based on four checklists: (1) website, (2) Rules of Procedure, (3) Annual Report and Persons responsible for the handling of out-of-court settlement questions and (4) budget. In addition, there is another checklist to identify how complaints are handled and whether the parties concerned are correctly and timely informed about the progress and content of the file.</p> <p>Full audits evaluate ADR entities' compliance with all quality requirements, mini audits assess compliance with the accessibility and transparency requirements by vetting ADR entities' websites, annual reports and the training followed by staff.</p> <p>After the audits, each entity receives the result of the findings of the auditors. They then have two months to submit their comments and/or make the necessary adjustments. Once this deadline has passed, the auditors verify which actions the entities have undertaken and make a final state of play of their work on the audits carried out. Working with checklists has proved to be a best practice in terms of both accreditation and control.</p> |
| BG | <p>Biannual reports</p> <p>The monitoring of compliance is done by the ADR competent authority through bi-annual reports (pursuant Art. 19(3) of the ADR Directive).</p> <p>Other monitoring mechanisms</p> <p>ADR entities have an obligation to immediately notify the competent authority in case a change happens in the circumstances which certified that they meet the requirements for accreditation. This notification is followed by a re-examination to confirm whether the given ADR entity continues to meet the criteria for being accredited.</p> |

Annual activity reports

- CY The monitoring of ADR entities is carried out by the Consumer Protection Service through annual activity reports (as per Article 7(2) of the ADR Directive).

Spot checks

A random check was carried out in 2018 on two ADR entities by the competent authority.

Biannual reports

Biannual reports pursuant to Art. 19(3) of the ADR Directive are sent by the ADR entities every year on 30 June and 31 December.

Annual activity reports

- CZ Annual activity reports (as per Article 7(2) of the ADR Directive) shall be sent by ADR entities based on a mutual agreement every year.

Other monitoring mechanisms

Another monitoring mechanism is the so-called platform of ADR entities. This platform is a joint meeting of ADR entities that takes place at least twice a year at the Ministry of Industry and Trade (the competent authority). During this meeting, consultations take place, and the ADR entities evaluate their activities. Besides, the ADR entities share information and their experience, examples of good practice, resolve any arising issues.

Biannual reports and Annual activity reports

The monitoring of the ADR entities is carried out by the Federal Office for Justice through bi-annual reports (Art. 19(3)) and annual activity reports (Art. 7(2)).

- DE **Other monitoring mechanisms**

Third persons can indicate to the Federal Office for Justice (competent authority) if there are any problematic issues regarding any ADR entities. Such indications are checked by the competent authority to establish whether there is a reason to withdraw the accreditation. Such indications are always case or issue based.

Annual activity reports

Monitoring occurs through annual activity reports that the ADR entities send to the Danish Appeals Boards Authority (as per Article 7(2) of the ADR Directive).

Other monitoring mechanisms

- DK The competent authority receives ongoing complaints from citizens, after which the authority assesses whether the complaint is generally applicable to the Appeals Board and whether the Complaints Board complies with their statutes. This is usually a citizen who is dissatisfied with the decision, after which the authority states that they cannot intervene in specific decisions, as the appeals boards are independent.

Annual activity reports

- EE The monitoring of the ADR entities is carried out by the Consumer Protection and Technical Regulatory Authority of the Ministry of Economic Affairs and Communications through annual activity reports (Art. 7(2)).

Biannual reports

DG Consumers that is the main ADR authority in Spain carries out bi-annual reports according to Art. 19(3) of the ADR Directive.

Other monitoring mechanisms

DG Consumers monitors ADR entities also through information on the activity provided by ADR entities, resolution of queries or doubts, data on the procedures attended.

- ES Regarding the claims of the Stocks Market National Commission that is the ADR entity on consumers' disputes related to entities subject to the supervision of the Stocks Market National Commission, compliance monitoring is carried out through the obligation of the ADR entity to address an annual report of its ADR activity to the Council of the Stocks Market National Commission.

Regarding the claims service of the Bank of Spain that is the ADR entity (not notified to the Commission as an ADR entity) on consumers' disputes related to entities subject to the supervision of the Bank of Spain, compliance monitoring is carried out through the obligation of the ADR entity to address an annual report of its ADR activity to the Executive Committee and Governing Council of the Bank of Spain.

Annual activity reports

- FI The Ministry of Justice (ADR competent authority) carries out the monitoring through annual activity reports (Art. 7(2)).

Spot checks

The monitoring of the ADR entities by CECMC is done via spot-checks.

Biannual and annual activity reports

The monitoring of the ADR entities by CECMC is done through bi-annual reports (Art. 19(3)) and annual activity reports (Art. 7(2)).

- FR **Other monitoring mechanisms**

The CECMC has established a multiannual programme for the evaluation and monitoring of consumer mediation based on the principle of an evaluation of each mediation entity at least once every three years. In addition, the CECMC carries out closer monitoring in the event of numerous reporting or when vigilance is required once the entity is registered. Between March 2019 and July 2021, the CECMC has checked 23 mediators.

Biannual reports

- EL The General Directorate for Market and Consumer Protection is the competent authority for the monitoring of the ADR bodies' compliance with the ADR Directive. The monitoring of the ADR bodies' compliance with the Directive 2013/11/EU is carried through biannual activity reports (Art. 19(3)).

Annual activity reports

- HR Once a year the ADR competent authority asks the ADR entities to submit their annual report (as per the ADR Directive).

Annual activity reports

- HU The minister for consumer protection is responsible for monitoring the ADR entities (Art. 7(2)). There is an obligation for the ADR entities to provide a report every 6 months in each reporting period. The types of those decisions are predetermined by the Ministry.

Biannual reports and annual activity reports

The CPCC is primarily responsible for monitoring the compliance of ADR entities with the requirements of the ADR Regulations through the reports that the ADR entities submit to the CPCC. The frequency is determined by the Regulation primarily (i.e. Annual activity reports and bi-annual reports cf. Art 7(2) and Art 19(3)).

- IE **Other monitoring mechanisms**

There is also ongoing monitoring of complaints to ensure no issues are occurring. The CPCC also monitor any complaints or queries received in relation to the ADR entities to identify any issues. This monitoring - and the decision to act - would be based on evidence gathered through market intelligence, contacts to our consumer helpline or ADR inbox, research and investigation and international good practice.

Annual activity reports

- IS The Ministry of Culture and Business Affairs monitors the ADR entities every year in line with Art. 7(2) of the ADR Directive.

Other monitoring mechanisms

Letters of inquiry, if necessary.

Annual activity reports

- IT Normally, the monitoring activities are carried out on an yearly basis as each ADR entity is required to issue a report as provided by Articles 141 quater(2) and 141 nonies(4) of the Consumers code.

Biannual reports

- LI The Office for National Economy, the competent authority, is responsible for monitoring compliance with ADR entities. Lichtenstein law does not set out a specific procedure for monitoring. However, the ADR entities have the obligation, under Art. 25 AStG to provide every two years, the last two annual activity reports to the competent authority.

Bi-annual reports and Annual activity reports

- LT Monitoring occurs through annual activity reports (Art. 7(2)) and bi-annual reports 19(3)) carried out by the Ministry of Justice.

Annual activity reports and biannual reports

- LU Monitoring occurs through annual activity reports (Art. 7(2)) and bi-annual reports 19(3)) carried out by the Ministry for Consumer Protection

Annual activity reports

- LV The monitoring of the ADR entities is carried out by Consumer Rights Protection Centre through annual activity reports (Art. 7(2)).

Annual activity reports

- MT Monitoring shall occur through annual activity reports (Art. 7(2)). However, monitoring is not being carried out by the competent authority due to lack of resources.

Bi-annual reports and Annual activity reports

- NL The monitoring is carried out by the respective designated Minister in whose policy area the ADR is operating (Article 16 (1) Implementation Act). One exception was made concerning the monitoring of the SGC. To prevent fragmented reporting obligations, the Ministry of Justice & Security is the sole designated competent authority for the multi-sectoral SGC system (Article 16 (2) Implementation Act). The monitoring mechanism consists of reviewing annual activity reports Art. 7(2)) and bi-annual reports Art 19(3)) of their respective ADR entities. The competent authority and its ADR meet at least once a year to connect and discuss best practices and/or recommendations. If necessary, additional meetings are initiated throughout the year.

Other monitoring mechanisms

The Rent Commission and the SGC should be evaluated once every 5 years based on the rules in the General Administrative Law Act on subsidies. KIFID and SKGZ are to be evaluated under the Financial Supervision Act and the Decree on the supervision of financial undertakings once every 4 years.

Annual activity reports

NO The Ministry of Children and Families has the overall responsibility for monitoring. The main monitoring takes place through annual activity reports (Art. 7(2) of the ADR Directive). In cases where the annual reports or the complaints show inconsistencies, the Ministry will investigate whether the issue is wider. They do not engage in individual cases.

Other monitoring mechanisms

Contact and dialog with ADR entities in case of information/concern from consumers, organisations, etc.

Annual activity reports

PL The President of the Office of Competition and Consumer Protection shall be responsible for monitoring the activities of ADR entities.

The President's obligation to monitor ADR entities is performed by checking annual reports of ADR entities according to Art. 7(2) of the ADR Directive

Spot checks

DG Consumer (the ADR competent authority) used to monitor compliance of ADR entities also through spot-checks.

Annual activity reports

PT After authorizing the ADR entity, DG Consumer carries out an annual of the entity and visit its website, according to Art. 7(2) of the ADR Directive.

Other monitoring mechanisms

The monitoring includes DG Consumer (the ADR competent authority) analysing complaints against ADR entities from consumers or traders made in the "complaints book". In addition, an analysis of ADR entities' applications to a fund managed by DG Consumer ("Consumer Rights Promotion Fund") is carried out. In the framework of these applications, ADR entities have to submit financial/budget documents, Activity Reports and Activity Plans.

Other monitoring mechanisms

RO The Ministry of Energy is the authority appointed to carry out the monitoring of all ADR entities in all sectors. The actual monitoring methodology is currently being elaborated as part of the Project "Consolidation of the capacity of regulation, implementation, evaluation and conduct of alternative dispute resolution activities performed by entities coordinated by the Ministry of Energy and the National Authority for Consumer Protection", code SIPOCA/SMIS 720/129982, financing contract no. 561/14.10.2020, co-financed from the Social European Fund, through the Operational Programme Administrative Capacity 2014-2020 (OPAC), seeking to cover all the gaps in the GO 38/2015. As per GO 38/2015 the ADR entities are under an obligation to report to the authority once every two years.

Biannual reports

Monitoring is carried out through biannual reports pursuant to Art. 19(3) of the ADR Directive.

Other monitoring mechanisms

SE

When a consumer complaint against an accredited ADR entity, they are received by the Legal, Financial and Administrative Services Agency (competent authority), the competent authority assesses whether a supervisory case should be opened, and further examination should be carried out. Such a case could lead to the withdrawal of the accreditation in case the ADR entity no longer complies with their obligations.

Biannual reports and annual activity reports

SI

Monitoring occurs through annual activity reports (Art. 7(2)) and bi-annual reports Art. 19(3) carried out by the Ministry of Economic Development and Technology

Spot checks

The Ministry of Economy carries out spot checks for monitoring compliance of ADR entities.

SK

Biannual reports and Annual activity reports

Monitoring occurs through annual activity reports (Art. 7(2)) and bi-annual reports Art. 19(3) carried out by the Ministry of Economy.

Overview of monitoring mechanisms

| | Spot-checks | Biannual reports | Annual activity reports | Other monitoring mechanisms |
|----------------------------|-------------|------------------|-------------------------|-----------------------------|
| Austria | | | ✓ | |
| Belgium | ✓ | | ✓ | ✓ |
| Bulgaria | | ✓ | | ✓ |
| Croatia | | | ✓ | |
| Cyprus | | | ✓ | |
| Czech Republic | ✓ | ✓ | ✓ | ✓ |
| Denmark | | | ✓ | ✓ |
| Estonia | | | ✓ | |
| Finland | | | ✓ | |
| France | ✓ | ✓ | ✓ | |
| Germany | | ✓ | ✓ | ✓ |
| Greece | | ✓ | | |
| Hungary | | | ✓ | |
| Iceland | | | ✓ | ✓ |
| Ireland | | ✓ | ✓ | ✓ |
| Italy | | | ✓ | |
| Latvia | | | ✓ | |
| Liechtenstein | | ✓ | | |
| Lithuania | | ✓ | ✓ | |
| Luxembourg | | ✓ | ✓ | |
| Malta¹⁹³ | | | ✓ | |
| Netherlands | | ✓ | ✓ | ✓ |
| Norway | | | ✓ | ✓ |
| Poland | | | ✓ | |
| Portugal | ✓ | | ✓ | ✓ |
| Romania | | | | ✓ |
| Slovakia | ✓ | ✓ | ✓ | |
| Slovenia | ✓ | ✓ | ✓ | ✓ |
| Spain | | ✓ | | ✓ |
| Sweden | | ✓ | | ✓ |

¹⁹³ The findings of our research show that monitoring activities are not being carried out by the competent authority due to lack of resources.

ANNEX IV.D: LIST OF ADR GRANT AWARDEES

| Project Title | Coordinator | Country of Coordinator |
|---|---|------------------------|
| System Upgrade, Consumer Communication, Expansion and Sustainable Solutions | SDRUZHENIE NATSIONALNA ASOTSIATSI AZA IZVANSADEBNI SPOGODBI | BG |
| Improving Effectiveness and Efficiency of the Office of the Arbiter for Financial Services in Malta | OFFICE OF THE ARBITER FOR FINANCIAL SERVICES | MT |
| Explanation videos to facilitate access to ADR proceedings and direct advertising for two ADR entities | RUNDFUNK UND TELEKOM REGULIERUNGS GMBH | AT |
| Improving Consumer Awareness | PROFI TEST D.O.O. | HR |
| Internet Ombudsmann Update | OSTERREICHISCHES INSTITUT FÜR ANGEWANDTE TELEKOMMUNIKATION | AT |
| Providing Consumers with Instant Access to ADR Technology, Promoting Consumer - Trader Awareness and Quality Dispute Resolution and Changing Companies Mindset towards ADR. | ADRPOINT P.C.-ALTERNATIVE DISPUTE RESOLUTION CENTER | EL |
| Simple Access to ADR for Consumers | RESOLUTIA S.R.L. | IT |
| National Alternative Dispute Resolution Convention 2019 | STICHTING KLACHTEN EN GESCHILLEN ZORGVERZEKERINGEN | NL |
| Conciliazione Telematica Territoriale | CAMERA DI COMMERCIO DI COSENZA | IT |
| Trans-borders tourism ADRs development | ASSOCIATION DE MEDIATION TOURISME VOYAGE | FR |
| Development of a flexible ICT platform to accommodate current and future requests for ODR in different industry sectors | NETNEUTRALS EU LTD | IE |
| ADR Roadshow. Explaining the benefits of ADR to businesses and encouraging them to use it | PRO MEDIATE (UK) LIMITED | UK |
| Consumers and Traders Joint Achievement Compromise | AGENCIA CATALANA DEL CONSUM | ES |
| Acciones de sensibilización de la Junta Arbitral de Euskadi | INSTITUTO VASCO DE CONSUMO KONTSUMOBIDE | ES |

| | | |
|--|--|----|
| Raising consumers access to efficient dispute resolution | OMBUDSMAN DU COMMERCE | BE |
| DIGITALIZATION | ASOCIACION PARA LA AUTORREGULACION DE LA COMUNICACION COMERCIAL | ES |
| CONSUMER INFORMATION CAMPAIGN | ASOCIACION PARA LA AUTORREGULACION DE LA COMUNICACION COMERCIAL | ES |
| Campaign for the Promotion of Consumer ADR | A.D.R. CYPRUS CENTER LTD | CY |
| Improvement of the Lithuanian ADR system for more active involvement of social partners (consumer and business associations). | VALSTYBINE VARTOTOJU TEISIU APSAUGOS TARNYBA VI | LT |
| An Internal Electronic Complaints Management System for the Hellenic Financial Ombudsman | ELLINIKOS HRIMATOOIKONOMIKOS MESOLAVITIS ASTIKIMI KERDOSKOPIKI ETAIREIA ENALLAKTIKIS EPILISIS DIAFORON | EL |
| Effective Redress through Alternative Dispute Resolution | MALTA COMPETITION AND CONSUMER AFFAIRS AUTHORITY | MT |
| CAPACITY BUILDING OF THE ALTERNATIVE DISPUTE RESOLUTION (ADR) BODY FOR CONSUMER DISPUTES IN ESTONIA | TARBIJAKAITSE JA TEHNILISE JARELEVALVE AMET | EE |
| Developing Alternative Dispute Services for the Maltese Online Gaming Industry | RGOAL LIMITED | MT |
| Replacement of ADR processing system | BUS USERS UK CHARITABLE TRUST LTD | UK |
| Develop and promote ADR technology for domestic and cross-border consumer disputes in travel and tourism sector and increase the operational capacity of ADR entities through eADR learning and training | ADRPOINT P.C.-ALTERNATIVE DISPUTE RESOLUTION CENTER | EL |
| Do Not Gamble Your Consumer Rights | EADR LTD | MT |
| Increase of mediation for consumers through CM2C | CENTRE DE LA MEDIATION DE LA CONSOMMATION DES CONCILIEURS DE JUSTICE | FR |

| | | |
|--|---|----|
| UTILITIES DISPUTES SOLUTION | ACCADEMIADR SRL | IT |
| The action which is the subject of this application is the creation and publication of a series of training modules for consumers on advertising and data protection, to be developed during the first m | ASOCIACION PARA LA AUTORREGULACION DE LA COMUNICACION COMERCIAL | ES |
| THE ARBITRAL CONSUMPTION SYSTEM IN THE BASQUE COUNTRY: INNOVATION AND DISSEMINATION | INSTITUTO VASCO DE CONSUMO KONTSUMOBIDE | ES |
| Internet Ombudsmann Case Management System | OSTERREICHISCHES INSTITUT FUR ANGEWANDTE TELEKOMMUNIKATION | AT |
| Consumer Mediation Training and Awareness | ATLANTIQUE MEDIATION | FR |
| Purchase of a new apf ADR processing tool to increase efficiency in case processing. | SCHIENEN CONTROL OSTERREICHISCHE GESELLSCHAFT FUR SCHIENENVERKEHRSMARKTREGULIERUNG MIT BESCHRANKTER HAFTUNG | AT |
| TRAVELNET NETWORK | ASSOCIATION DE MEDIATION TOURISME VOYAGE | FR |
| Promotion of awareness regarding ADR/ODR for Consumers in the Tourism Sector | CENTRO TUTELA CONSUMATORI UTENTI | IT |
| Door to Door Consumer Arbitration Board in Región de Murcia | REGION DE MURCIA | ES |
| Low threshold communication SKGZ | STICHTING KLACHTEN EN GESCHILLEN ZORGVERZEKERINGEN | NL |
| Improvement of Arbitration Case Management System | OMBUDSSTELLE FUR SACHWERTE UND INVESTMENTVERMOGEN EV | DE |
| Online Dispute Resolution in e-Commerce Disputes | INSTITUTO ENALLAKTIKIS EPILISIS DIAFORON | EL |
| Building sustainable and digital friendly cross-border alternative dispute resolution scheme for consumers | CZECH TRADE INSPECTION | CZ |
| National Alternative Dispute Resolution Convention 2021 | STICHTING KLACHTEN EN GESCHILLEN ZORGVERZEKERINGEN | NL |

| | | |
|--|---|----|
| A project to raise awareness and increase capacity building of consumers, consumer organisations, traders and trader organisations, lawyers, and generally EU nationals, on Consumer Law and Consumer AD | A.D.R. CYPRUS CENTER LTD | CY |
| Resolving consumer disputes by mediation- strengthens the trust of consumers and traders | PROFI TEST D.O.O. | HR |
| Internal training Legal Advisors and Advertising Jury of AUTOCONTROL | ASOCIACION PARA LA AUTORREGULACION DE LA COMUNICACION COMERCIAL | ES |
| Mediation awareness in social media | ADR CENTER SRL | IT |
| The Alternative Dispute Resolution in Accord (ADRIA) with You | SDRUZENI CESKYCH SPOTREBITELU ZU | CZ |
| ODR Center 3.0 | ADR CENTER SRL | IT |
| ADR as the effective system of consumer protection in Slovakia | SPOLOCNOST OCHRANY SPOTREBITEL'OV (S.O.S.) POPRAD ZDRUZENIE | SK |
| CAPACITY BUILDING OF THE ALTERNATIVE DISPUTE RESOLUTION (ADR) BODY FOR CONSUMER DISPUTES IN ESTONIA | TARBIJAKAITSE JA TEHNILISE JARELEVALVE AMET | EE |
| Improving the ADR pre-trial procedure and increasing consumer awareness of ADR procedures, especially those seeking legal advice from lawyers | PETROVIC ALEKSANDER | SI |
| Smart ODR Tool, based on game theory algorithms and A.I. routines implemented in an evolved ODR platform, to support the decisions of the parties and the resolution proposals of mediators/conciliators | WORKS IN PROGRESS SRL | IT |
| FOUR CLICK FOR CONSUMERS | ACCADEMIADR SRL | IT |
| Improving efficiency of local ADR Body with agile development and promotion of services | VESZPREM MEGYEI KERESKEDELMI ES IPARKAMARA | HU |

| | | |
|---|--|----|
| Alternative resolution of consumer disputes in the sectors Energy and Water, Postal services and electronic communications, through mediation | PROFI TEST D.O.O. | HR |
| Internet Ombudsstelle SEO | OSTERREICHISCHES INSTITUT FÜR ANGEWANDTE TELEKOMMUNIKATION | AT |
| Favoring Alternative dispute Resolution mechanisms | COMUNIDAD FORAL DE NAVARRA - GOBIERNO DE NAVARRA | ES |
| CONSUMER ADR SOFTWARE | ASSOCIATION DE MEDIATION TOURISME VOYAGE | FR |
| Improve Management and Participation in ADR, Consumer Communication and Teaching Traders about ADR | SDRUZHENIE NATSIONALNA ASOTSIATSIYA IZVANSADEBNI SPOGODBI | BG |
| Shining CMS | SERVICE DE MEDIATION POUR LE CONSOMMATEUR | BE |
| An action to inform students of Universities about ADR, train existing mediators and create the European/EU ADR Consortium | A.D.R. CYPRUS CENTER LTD | CY |
| ODR ecosystem for consumers and traders | ADRPOINT P.C.-ALTERNATIVE DISPUTE RESOLUTION CENTER | EL |
| ADR for Traders | ADR CENTER SRL | IT |
| Capacity Building for Austrian Residual ADR | SCHLICHTUNG FÜR VERBRAUCHERGESCHAFT | AT |
| Technological solutions applied to the management of an alternative dispute resolution system for consumer disputes | CONSEJERIA DE DESARROLLO SOSTENIBLE DE CASTILLA LA MANCHA | ES |
| ADR - an effective tool for out-of-court dispute resolution | ZDRUZENIE NA OCHRANU PRAV OBCANA - AVES | SK |
| Alternative Dispute Resolution Convention 2024 | STICHTING KLACHTEN EN GESCHILLEN ZORGVERZEKERINGEN | NL |
| YesSsi II- Simple Access to complaints and other ADR for consumers | RESOLUTIA S.R.L. | IT |
| Awareness raising and trust to ADR | EVROPSKI CENTER ZA RESEVANJE SPOROV, LJUBLJANA | SI |
| Online Dispute Resolution for Travel Disputes | INSTITOUTO ENALLAKTIKIS EPILISIS DIAFORON | EL |
| Alternative Dispute Resolution innovation in the Tuscany water service | AUTORITA IDRICA TOSCANA | IT |

| | | |
|--|--|----|
| TRANSFORMATION DU SITE INTERNET ET DE LA PLATEFORME DE LA COMMISSION MEDIATION FRANCHISE CONSOMMATEURS ET COMMUNICATION ET COMMUNICATION AU PUBLIC | FEDERATION FRANCAISE DE LA FRANCHISE | FR |
| "Consensus Network for Efficiency, Transformation and Sustainability" | TSENTAR ZA ALTERNATIVNO RESHAVANE NA SPOROVE KONSENSUS | BG |

ANNEX V: OVERVIEW OF COSTS AND BENEFITS

| | Consumers | Businesses | ADR Competent Authorities | ADR entities |
|-------------------------|-----------|---|--|---|
| Cost Description | | | | |
| Compliance Costs | | <p>Traders incur costs to comply with the information obligations i.e. putting ADR information on their website, in the general terms and conditions, the link to the ODR platform. These are considered marginal costs, what is most costly for a business is keeping abreast of all the relevant EU retail market legislation; especially for SMEs to be compliant but also to be able to answer consumer claims.</p> | <p>ADR Competent authorities incur costs to accredit (i.e. checking the conditions, evaluating the application, issuing the decision, registering the entity in the national list of quality ADR entities and notifying the Commission) and regularly monitor the process of ADR entities.</p> <p>This is particularly burdensome where there are many ADR entities so mainly in FR, IT and ES. About 1/3 MS have less than 1 full-time equivalent (FTE) carrying out competent authorities' work. Seven have between one and three, and with 5.5 FTEs France is the exception, and this relates to the very high number of ADR entities and a complex verification processes.</p> <p>Authorities have to submit a report to the Commission every 4 years.</p> | <p>ADR entities' main costs are the human resources to manage them and provide the ADR procedures. Costs include:</p> <ul style="list-style-type: none"> - providing information for the accreditation process, - training of ADR staff, - infrastructure costs (e.g. digital tools to process disputes), - providing information to consumers and traders notably through their website, - preparing and publishing annual activity reports and communication to ADR competent authorities every 2 years - cooperating in the resolution of cross-border disputes and sharing of best practices with other ADR entities, |

| | | | | |
|-----------------------|---|--|---|--|
| | | | | <p>- overhead costs, including IT and compliance to GDPR costs, and translation costs, where relevant.</p> <p>Costs per ADR entity varies significantly depending on the number of disputes resolved.</p> <p>No data is available on the minimum number of disputes to cover the operations of ADR entities.</p> <p>The rate of rejected cases by ADR entities is high in some Member States (up to 60% between 2019-2022); hence resulting in a waste of resources.</p> |
| Indirect Costs | <p>Consumers bear consumer fees and time needed for dealing with a dispute i.e. to understand the ADR procedure and the time to launch and follow the dispute itself. MS ensure that the ADR procedures are either free of charge or provided at a nominal fee.</p> | <p>The overall costs that traders incur depend on the funding model of ADR (whether it is publicly funded, privately funded or mixed). In MS where traders bear the costs of ADR entities, the model can vary e.g. a fixed cost to resolve x number of disputes, a fee for each dispute (or both). Where</p> | <p>MS had to designate ADR competent authority/ies i.e. costs related to the setting up of the authority if it was not already existent (human resources, infrastructure costs, etc).</p> | <p>Where ADR was still a novelty or not widely known, new ADR entities were set up to ensure coverage of all the market sectors. Hence, costs were borne (rental of</p> |

| | | | | |
|------------------------|---|--|--|---|
| | | <p>traders pay participation fee to a trader organisation, this can range from EUR 10 (CZ) to EUR 100 (IE) and even within a country it depends on the sector.</p> <p>Traders bear the costs of dispute resolution itself, in the form of the financial and human resources needed for dealing with a dispute i.e. time spent on each dispute for submitting information and evidence, legal advice and translation.</p> | | premises, staff, etc.) |
| Direct Benefits | <p>Where ADR is efficient and effective, consumers use it to resolve low-value disputes in a rapid and affordable manner; hence increasing consumer trust in the single market.</p> | <p>Traders benefit from ADR i.e. by resolving disputes in an affordable and cheaper way than going to court litigation and good reputation.</p> | | <p>Some ADR entities were awarded ADR grants to improve their case-handling, governance structures or for the sake of awareness raising.</p> <p>Sharing of best practices actions has been beneficial for the functioning of ADR.</p> |