

The Consumer Voice in Europe

## ALTERNATIVE DISPUTE RESOLUTION FOR CONSUMERS: TIME TO MOVE UP A GEAR



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## Why it matters to consumers

Consumer Alternative Dispute Resolution (ADR) gives consumers and traders the possibility to resolve disputes out-of-court via the input of a third-party and through a process which should be simple, fast and non-expensive. However, since Directive 2013/11/EU which modernised the EU framework for consumer ADR in Europe, ADR has not fully taken off in many European countries and is not running satisfactorily in all business sectors. In the context of the evaluation of the Consumer ADR Directive and the ODR Regulation, it is important that the EU upgrades the existing rules to ensure that ADR delivers on the ground for consumers and is a viable pathway to obtain redress.

## Summary

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Consumer ADR/ODR, as provided for under EU Directive 2013/11/EU (the Consumer ADR Directive) and EU Regulation 524/2013 (the ODR Regulation), has failed to take off in many European countries and has not reached its full potential yet. In the context of the European Commission's evaluation of the existing regulatory framework, this paper makes several recommendations to bring consumer ADR/ODR to the next level.

We call on the European Commission and the Member States to:

### **1. Upgrading the quality requirements to improve consumers' and traders' trust**

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- Strengthen the quality requirements, particularly those relating to the independence, expertise, and impartiality of ADR entities, and ensure that the quality requirements are up to date and reflect current best practices.
- Adapt the quality requirements to the activities of ODR providers.
- Adopt specific quality requirements to address the needs of vulnerable consumers.
- Strengthen and promote the participation of consumer organisations in the governance of ADR entities.

### **2. Establishing simpler and more coherent ADR landscapes and architectures**

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- Promote simpler and more rationalized ADR architectures.
- Promote national ADR landscapes that are structured around a limited number of sectorial ADR entities covering sectors in their entirety.

### **3. Enhancing the oversight of ADR entities**

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- Ensure that the Competent Authorities have sufficient resources to perform their tasks effectively.
- Require Competent Authorities to conduct more frequent investigations into certified ADR entities.
- Require Competent Authorities to publish annual reports on their websites summarising their activities and their recommendations for ADR entities.
- Strengthen the European network of Competent authorities to facilitate the sharing of best practices and the dissemination of knowledge.

### **4. Making traders' participation in ADR procedures mandatory**

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- Make traders' participation in ADR mandatory in all sectors.
- At the very least, make traders' participation mandatory in sectors yielding the highest number of consumer complaints (e.g., transports).
- Require traders to participate in good faith in ADR procedures.
- Require ADR entities to report to Competent Authorities traders who systematically and unduly refuse to participate in ADR procedures.
- Require Competent Authorities to publicly disclose the names of traders who systematically and unduly refuse to participate in ADR procedures.

### **5. Incentivizing traders to comply with the outcomes of ADR procedures**

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- Require ADR entities to report to Competent Authorities traders who systematically and unduly refuse to comply with the outcomes of ADR procedures.
- Require Competent Authorities to publicly disclose the names of traders who systematically and unduly refuse to comply with the outcomes of ADR procedures.

### **6. Improving consumers' education and awareness**

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- Establish online portals at national level for better signposting consumers and informing them about the availability of consumer ADR.
- Require Competent Authorities to verify that ADR entities provide sufficient and clear information about their rules of procedure.
- Support initiatives from ADR entities and Competent Authorities aiming at reaching out to consumers on the ground and in public areas.

## **7. Simplifying the consumer journey and removing the unnecessary barriers**

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- Ensure that all unnecessary procedural barriers are removed.
- Make ADR free of charge for consumers.
- Clarify what a “complete complaint” means in accordance with Art. 8(e) of the Consumer ADR Directive and clarify that the time given to an ADR entity to solve a complaint start when consumers have sent their complaint to the ADR entity.
- Require Competent Authorities to regularly verify that ADR entities respect the legal timeframe set down in the Consumer ADR Directive for delivering the outcomes of ADR procedures.
- Ensure that the digitalisation of ADR entities does not prevent consumers from contacting ADR staff in person and off-line.

## **8. Bringing the EU ODR platform to the next level**

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- Ensure that the Competent Authorities conduct the necessary checks to verify that traders correctly inform consumers about the availability of the EU ODR platform.
- Require traders to clearly inform consumers whether they are willing to use the EU ODR platform and, if not, require them to signpost consumers to the other relevant pathways to obtain redress.
- Improve the information available on the EU ODR platform, including information about consumer rights in sectors yielding the highest number of consumers complaints and information about all the pathways available to consumers to obtain redress.
- Better integrate consumer organisations into the functioning of the EU ODR platform.

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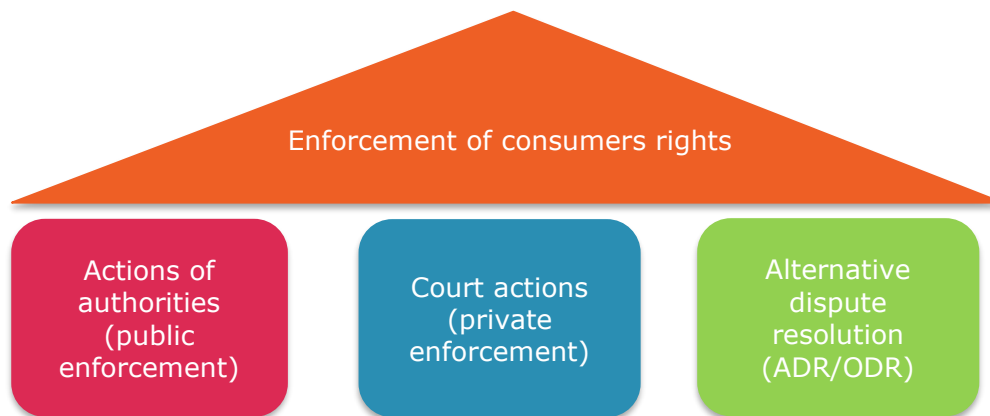
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## 1. Introduction

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### 1.1. ADR/ODR: a pathway for consumers to get redress

Alternative Dispute Resolution (ADR), and its online declination (ODR), gives consumers and traders the possibility to resolve their disputes out-of-court via the input of a third-party (a consumer ADR entity). Consumer ADR may take many different forms (conciliation, arbitration, or others) and may lead to various outcomes (non-binding recommendations, binding decisions, etc). The objective is to give consumers access to a simple, fast, and cost-effective route to solve their domestic and cross-border disputes. Beside actions before courts and public enforcement by authorities, ADR is therefore one of the pathways for enforcing consumers rights. It is particularly relevant for low-value claims when consumers have no incentive to vindicate their rights before courts.



### 1.2. 2013: a modernised framework for consumer ADR/ODR in Europe

In 2013, the EU adopted Directive 2013/11/EU (the Consumer ADR Directive)<sup>1</sup>, which established a modernised regulatory framework for consumer ADR across Europe. The Consumer ADR Directive pursued several objectives:

- **First, it intended to enhance the quality of ADR entities in Europe.** The Directive built on the previous European Commission Recommendations 98/257/EC<sup>2</sup> and 2001/310/EC<sup>3</sup>, and laid down several quality requirements for ADR entities. Those requirements apply to the setting up and the functioning of consumer ADR entities as well as to the outcomes of the ADR procedures. The Member States had to designate "Competent Authorities" to oversee ADR entities' activities and their compliance with the quality requirements in their respective countries.

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<sup>1</sup> Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer.

<sup>2</sup> 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.

<sup>3</sup> 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.

- **Second, the Directive sought to ensure a full coverage**, meaning that consumer ADR had to be available for all consumers in most economic sectors.<sup>4</sup>
- **Third, the Directive intended to raise awareness among consumers and traders.** In this context, the Directive notably imposed new information obligations on traders.

Importantly, the Directive followed **a minimum-harmonisation approach**. Therefore, it only laid down general requirements that Member States were then free to further complement and to adapt to their domestic environments. The reason underlying this approach was that some countries (e.g., the Netherlands, France, the UK) already had experience with consumer ADR in some sectors, and this long before the Directive was adopted. In those Member States, consumer ADR had been shaped by national and/or sectorial considerations. As a consequence, models significantly diverged in Europe. The Directive neither intended to wipe out the past nor to impose a one-size-fits-all approach. Rather, it sought to preserve national differences and built on the pre-existing structures.

In parallel, the EU also set up an Online Dispute Resolution Platform (the EU ODR Platform), whose functioning built on and complemented the regulatory framework established by the Consumer ADR Directive. The platform deals with disputes arising out from online purchases of products or services and intended to facilitate the coordination between consumers, traders, and the consumer ADR entities certified across Europe.

### 1.3. 2022-2023: time to take stock and to upgrade the rules

Adopted in 2013, the Consumer ADR Directive came into application in the Member States in 2015. In 2019, the European Commission published a first report on the application of the Consumer ADR Directive.<sup>5</sup> Three years after this first report and almost ten years after the adoption of the Directive, it is today time to assess whether it has achieved its objectives.

On a general level, **the development of consumer ADR in Europe remains highly uneven between but also within the Member States**. In some countries or sectors, consumer ADR is well-established while in many others it is still dragging its feet. In 2019, the European Commission highlighted that “overall the new ADR framework is still underused”.<sup>6</sup> According to the Consumer Condition Survey 2021, 5% of EU consumers on average brought their complaints to an ADR entity in 2020, and only 8% of them would approach an ADR body in the future in the event of experiencing problems.<sup>7</sup>

**In parallel, environments have changed a lot since the adoption of the Directive in 2013:**

- **First, regulatory contexts have evolved at the EU and national levels.** Out-of-court dispute resolution is today on the rise and an increasing numbers of EU legislations (or draft EU legislations) make explicit references to out-of-court dispute resolution with the intent to facilitate access to redress.<sup>8</sup> At national level, out-of-court dispute resolution has also often been an important building block to modernise civil justice systems. Some countries have for

<sup>4</sup> Art. 2 of the Consumer ADR Directive excludes a few sectors from its scope of application, including health services provided by health professionals and public providers of further or higher education.

<sup>5</sup> Report from the European Commission on the application of Directive 2013/11/EU, COM(2019)425 final, 25 September 2019:

[https://ec.europa.eu/info/sites/default/files/com\\_2019\\_425\\_f1\\_report\\_from\\_commission\\_en\\_v3\\_p1\\_1045545\\_0.pdf](https://ec.europa.eu/info/sites/default/files/com_2019_425_f1_report_from_commission_en_v3_p1_1045545_0.pdf)

<sup>6</sup> Report from the European Commission on the application of Directive 2013/11/EU, COM(2019)425 final, p. 9.

<sup>7</sup> Consumer Conditions Survey 2021: Consumers at home in the single market:

[https://ec.europa.eu/info/sites/default/files/ccs\\_key\\_highlights\\_120321\\_public.pdf](https://ec.europa.eu/info/sites/default/files/ccs_key_highlights_120321_public.pdf), p. 9.

<sup>8</sup> See (e.g.,) Art. 18 of the Commission proposal for a regulation on a Single Market for Digital Services (Digital Services Act), COM/2020/825 final, 15 December 2020.

instance made the preliminary use of ADR a mandatory step for litigants before going to courts.<sup>9</sup>

- **Second, new technological environments have had an impact on the way consumer ADR entities operate.** Back in 2013, online dispute resolution was still in its infancy. Since then, the area has gone through important developments with for instance new ODR providers proposing wider range of online services but also an increasing number of ADR entities relying on digital tools to screen and/or speed up the processing of consumer complaints. In parallel, an ever-increasing number of traders have developed their own online internal complaint handling systems, which poses the question of their interaction with consumer ADR.
- **Third, the COVID-19 pandemic, and more recently the energy crisis<sup>10</sup> have significantly increased the number of complaints that consumers have sent to ADR bodies.** These events have also served catalysts for a greater digitalisation of ADR procedures and an increasing number of ADR entities are today proposing online services.

For these reasons, several European countries have started discussions to update their existing ADR/ODR frameworks.<sup>11</sup> During the EU ADR Assembly of Autumn 2021, the European Commission announced its objective to evaluate the Consumer ADR Directive and the ODR Regulation through several studies, exchanges with stakeholders and evidence-gathering exercises.<sup>12</sup> **This evaluation is timely and very much welcome. BEUC hopes that it will constitute a first step towards the adoption of an upgraded regulatory framework ensuring that ADR/ODR is adapted to the current challenges and fully delivers for consumers on the ground.**

## 2. Quality requirements: upgrading the functioning of ADR entities

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### 2.1. Current state-of-play

The quality requirements laid down in the Consumer ADR Directive **aimed to respond to the concerns raised by ADR entities**, notably their lack of transparency and accountability, their lack of expertise and possible conflicts of interests, particularly when the ADR entities are funded or co-funded by traders or professional organisations. The ultimate objective was to level up the level trust among consumers and traders, and hence the use of ADR across Europe.

The quality criteria apply to the expertise, independence, and impartiality (Art.6), transparency (Art.7) of consumer ADR bodies, as well as to the effectiveness (Art.8), fairness (Art.9), liberty (Art.10), and legality (Art.11) of their procedures and/or outcomes. Importantly, these quality requirements **were deliberately left broad** and vague in the Directive as they had to accommodate all kinds of consumer ADR entities and procedures operating across the EU in a wide range of different sectors. Member States were also given considerable leeway to adapt the regulatory framework to their national needs. In

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<sup>9</sup> This is for instance the case in France where all complaints below €5,000 must be subject to mandatory out-of-court dispute resolution: <https://clubdesmediateurs.fr/instauration-dune-tentative-obligatoire-de-reglement-amiable-en-cas-de-litige-dun-enjeu-financier-inferieur-a-5000-euros/>.

<sup>10</sup> As the 2021 report of the Belgian Energy Ombudsman (Service de médiation de l'énergie/Ombudsdienst voor energie) for instance shows ([www.mediateurenergie.be/fr/publications/rapport-dactivites-2021](http://www.mediateurenergie.be/fr/publications/rapport-dactivites-2021)).

<sup>11</sup> Reforming competition and consumer policy: government response (20 April 2022): <https://www.gov.uk/government/consultations/reforming-competition-and-consumer-policy/outcome/reforming-competition-and-consumer-policy-government-response>

<sup>12</sup> [https://www.conpolicy.de/index.php?id=69&L=1&tx\\_news\\_pi1\[news\]=7663&tx\\_news\\_pi1\[controller\]=Item&tx\\_news\\_pi1\[action\]=show&cHash=3ea0c799c81c7baf6b4f21e2fabbbbd5](https://www.conpolicy.de/index.php?id=69&L=1&tx_news_pi1[news]=7663&tx_news_pi1[controller]=Item&tx_news_pi1[action]=show&cHash=3ea0c799c81c7baf6b4f21e2fabbbbd5)



particular, Member States were **free to impose stronger quality requirements** on their national ADR entities with a view to ensuring a higher level of consumer protection.

## 2.2. What are the issues?

**There are today important differences in the quality of ADR entities between and within countries, which is a consequence of the leeway that the Consumer ADR Directive gave to the Member States.** The latter have implemented the quality criteria differently. Some Member States went beyond what the Directive requested. For example, Germany requires dispute mediators (*Streitmittler*) to be fully qualified lawyers or certified mediators,<sup>13</sup> whereas the Directive only required the natural persons in charge of ADR to “possess the necessary knowledge and skills in the field of alternative or judicial resolution of consumer disputes as well as a general understanding of law”.<sup>14</sup> Portugal also increased the level of transparency required from ADR entities by requesting them to publish summaries detailing the outcomes of the ADR procedures.

In some Member States, stronger quality requirements have also been adopted **on a sectorial basis**. For example, the Civil Aviation Authority in the UK – in charge of overseeing ADR entities in the aviation sector – adopted higher requirements for ADR providers operating in the aviation sector.<sup>15</sup> In 2017, the Gambling Commission – the entity in charge of overseeing ADR providers operating in the gambling sector in the UK – highlighted that “one year on, it has become apparent that the requirements of the regulations [implementing the Consumer ADR Directive in England] were written broadly to meet the needs of a range of different sectors. As a result, they do not fully cover all consumer expectations in the gambling sector”.<sup>16</sup> The Gambling Commission therefore adopted additional quality requirements applying to ADR entities in the gambling sector.

Although the quality criteria of the Directive led to some improvements, **they are today insufficient to ensure a high quality of services and a levelled playing field among ADR entities across Europe.** The quality requirements of the Directive have contributed to improving the overall transparency of some consumer ADR schemes (for instance with the obligation for ADR entities to publish annual reports detailing their activities) and have sometimes triggered procedural changes in their complaint-handling processes.<sup>17</sup> Some ADR schemes have also made structural changes to strengthen their autonomy vis-à-vis the professional organisations that had established them. However, despite these improvements, the quality requirements still remain insufficient to ensure a high level of trust among consumers and traders. Concerns about ADR entities’ lack of independence and biases continue to score high in many countries.<sup>18</sup> For example, the Latvian Association for Consumer Protection (PIAA) has stressed that the requirements laid down in the Consumer ADR Directive are too low and do not ensure a sufficient independence of many ADR entities that are operating in Latvia. This is because Latvia has mostly relied on “historical” ADR entities and several of them still do not fully comply with the quality requirements of the Directive. In France, UFC-Que Choisir<sup>19</sup> and the *Comité Consultatif du*

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<sup>13</sup> Part 2, §6 Verbraucherstreitbeilegungsgesetz (VSBG) [VSBG - English \(gesetze-im-internet.de\)](https://www.gesetze-im-internet.de/vsbg/)

<sup>14</sup> Art.6(1)(a) of Directive 2013/11/EU.

<sup>15</sup> CAA Policy for ADR applicants and approved ADR entities (February 2021): <https://publicapps.caa.co.uk/docs/3/CAP1324%20Policy%20for%20ADR%20applicants%20and%20approved%20ADR%20entities.pdf>

<sup>16</sup> Gambling Commission, Standards and guidance for ADR providers in the gambling industry (October 2018): <https://assets.ctfassets.net/j16ev64qyf6l/4IcqSrVBV0t2pJmxEEC6wQ/350c490467df810786068334ddef5d2c/ADR-in-the-gambling-industry-guidance.pdf>

<sup>17</sup> For example, several ombudsmen have strengthened their internal organisation and procedural rules. This is notably the case of the French Telecom Ombudsman which recruited new staff to facilitate its complaints handling process.

<sup>18</sup> See e.g., Department for Business, Energy & Industrial Strategy (BEIS), Alternative dispute resolution and the court system, Final report (April 2018): [Resolving consumer disputes: Alternative Dispute Resolution and the courts system \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/674442/Resolving_consumer_disputes_Alternative_Dispute_Resolution_and_the_courts_system.pdf)

<sup>19</sup> [www.quechoisir.org/action-ufc-que-choisir-mediation-bancaire-un-grand-menage-s-impose-n92840/](https://www.quechoisir.org/action-ufc-que-choisir-mediation-bancaire-un-grand-menage-s-impose-n92840/), 1 July 2021.

*Secteur Financier*<sup>20</sup> have highlighted several issues concerning the independence of ADR bodies, in particular those acting in the banking sector. In some Member States, some certified ADR entities still do not comply with their transparency obligations and do not publish their activity reports. The lack of perceived independence has an impact on the level of trust among consumers and traders. In the UK, Which? for instance reports that a “consistent complaint from both businesses and consumers is that ADR bodies are in some way biased”.<sup>21</sup>

*"Several ADR providers fail to publish information about their processes leaving outsiders unclear as to how they ensure their independence" (Which?, 2021)*

**In parallel, the Consumer ADR Directive is lagging behind from a technological point of view.** it is time to adapt the quality requirements to the online world and to the multiplication of ODR providers. The consumer ADR Directive was drafted at a time where both the digitalisation of ADR procedures and the use of artificial intelligence for solving disputes were in their very early stages of development. New techniques and practices have progressively appeared and new online services for solving consumer disputes are emerging on national markets. In some countries, this has contributed to a form of confusion and made the sector more difficult to navigate for consumers. For example, as early as 2018, the French Ministry of Justice pointed out the wide diversity of ODR services available and the very uneven quality of the proposed services.<sup>22</sup> A few online dispute resolution providers have also started to propose services based on automated decision-making. Although these AI-based dispute resolution services seem to be still limited today, one may expect their number to increase in the coming years. **There is therefore a need to modernise the EU ADR/ODR framework to ensure that it continues to be adapted to this new technological reality.** Some European countries have already taken steps to accompany the development of ODR services and to ensure the quality of the services provided to users. For example, France has adopted a new voluntary certification scheme for ODR providers. ODR platforms seeking certification must *inter alia* show that they comply with data protection rules, ensure confidentiality, are independent, impartial, that their procedures are fair, and that their outcomes do not only rely on algorithms or automated systems.<sup>23</sup>

**Finally, the quality requirements must ensure that ADR entities are fully inclusive and that their services are available to all consumers, including vulnerable ones who may be the ones for whom ADR may be particularly important.** Some ADR entities have already taken steps to adapt the quality requirements to the needs of vulnerable consumers. For example, in 2018, the Gambling Commission in the UK adopted additional quality standards, which among other things, require ADR providers in this sector to carefully consider the situation of vulnerable consumers and require them to

<sup>20</sup> [www.economie.gouv.fr/mediation-bancaire-assurantielle-propositions-amelioration-ccsf](http://www.economie.gouv.fr/mediation-bancaire-assurantielle-propositions-amelioration-ccsf), 2 July 2021.

<sup>21</sup> Which? Are Alternative Dispute Resolution schemes working for consumers? (Policy Report 2021): p. 7 <https://www.which.co.uk/policy/consumers/7428/adrschemes>

<sup>22</sup> [www.assemblee-nationale.fr/dyn/15/comptes-rendus/seance/session-ordinaire-de-2018-2019/premiere-seance-du-mercredi-21-novembre-2018#P1526128](http://www.assemblee-nationale.fr/dyn/15/comptes-rendus/seance/session-ordinaire-de-2018-2019/premiere-seance-du-mercredi-21-novembre-2018#P1526128) ('C'est une réalité foisonnante, parfois anarchique. On trouve le meilleur et le pire'). Research has also been conducted to better understand the functioning of online dispute resolution services (see e.g., 'Le e-règlement extrajudiciaire des différends. Le déploiement d'une justice alternative en ligne', Centre de recherches Droits et perspectives du droit Université de Lille (January 2019) [www.gip-recherche-justice.fr/publication/le-e-reglement-extrajudiciaire-des-differends-le-deploiement-dune-justice-alternative-en-ligne/](http://www.gip-recherche-justice.fr/publication/le-e-reglement-extrajudiciaire-des-differends-le-deploiement-dune-justice-alternative-en-ligne/)

<sup>23</sup> Loi n. 2019-222 du 23 mars 2019 de programmation 2018-2022 et de réforme pour la justice.

establish an effective procedure that vulnerable users may use to make a complaint against the services provided by the ADR provider.<sup>24</sup>

### 2.3. The way forward: greater quality for higher trust

Quality is essential to enhance trust and trust is key for the development and the take-up of ADR.

Therefore, we call on the European Commission and the Member States to:

- **Ensure that the quality requirements laid down in the Consumer ADR Directive remain up to date and reflect current best practices.** Some Member States or sectors within Member States have adopted higher quality requirements for ADR entities for the purpose of ensuring higher protection for consumers. These additional requirements should be carefully considered and, where relevant, the Commission should **level up the playing field** in order to ensure that consumers can benefit from the highest quality standards across Europe.
- **Strengthen the existing quality requirements applying to consumer ADR entities, and in particular strengthen their independence and impartiality as well as their expertise in consumer law and relevant sectorial legislations.** The staff of consumer ADR entities should be required to undergo training to ensure that their knowledge is continuously up to date.
- **Adapt the quality requirements to the activities of ODR providers.** Consumers should continue to benefit from the highest level of quality when they reach out to ODR providers and when ADR entities used digitalised services.
- **Adopt specific quality requirements to address the needs of vulnerable consumers.** This could for instance be done via training obligations for the ADR staff, the publication of specific policies for vulnerable consumers and the obligation to have specific procedures for vulnerable groups.
- **Strengthen and encourage the participation of consumer organisations in the governance of ADR entities.** In Denmark, consumer representatives take part in almost all complaints boards, and this has contributed to strengthening consumers' confidence in ADR.

## 3. Architecture & coverage: towards ADR landscapes without gaps

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### 3.1. Current state-of-play

The consumer ADR Directive did not impose a specific model for consumer ADR. It intended to respect national differences and built on pre-existing structures (when they existed). The objective was however to ensure that consumer ADR would be available for consumers in all economic sectors.

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<sup>24</sup> Gambling Commission, *Alternative Dispute Resolution (ADR) in the gambling industry – Standards and guidance for ADR providers*, 2018, (available at: <https://assets.ctfassets.net/j16ev64qyf6l/4IcqSrVBV0t2pJmxEEC6wQ/350c490467df810786068334ddef5d2c/ADR-in-the-gambling-industry-guidance.pdf>)

### 3.2. What are the issues?

**Europe counts more than 400 certified ADR entities and landscapes remain very uneven at national level.** For example, France counts approximately 94 certified ADR entities, which makes the French landscape particularly fragmented and difficult to navigate for consumers and traders. In some areas, a multitude of ADR entities may continue to coexist. This is notably the case in the French banking sector. This is because local branches of banks and other financial institutions have set up their own ADR schemes. In parallel, France also counts numerous in-house ADR entities (*médiateurs d'entreprises*), which are "historic" ADR entities embedded into (and closely linked to) companies and banks. In a report published in Autumn 2021, the French Competent Authority supervising ADR entities (*Comité d'Evaluation et de Contrôle de la Médiation de la Consommation – CECMC*) highlighted significant differences in the activities of certified ADR entities: six ADR entities dealt with more than 10,000 complaints per year while nine ADR entities dealt with less than 10 complaints per year.<sup>25</sup> Furthermore, besides certified ADR entities, some non-certified ADR entities may also continue to propose their services in some countries. Several reasons may explain their decision not to seek certification, including their desire to keep more regulatory freedom.

**The high number of certified ADR entities in some countries (or sectors within countries) does not necessarily guarantee that sectors are covered in their entirety.** In the UK, Which? has highlighted that "despite there being more than 50 approved ADR schemes in the UK, there are still significant gaps in ADR provision in many sectors including key sectors such as aviation, some parts of the property sector, retail, motor and home improvements (...)".<sup>26</sup> Which? further stressed that there is little evidence to support the case for allowing more than one approved ADR provider in any single sector. It ultimately appears that competition does not necessarily work in the case of too many ADR schemes because businesses might be tempted to 'shop around' for the ADR provider offering the best possible outcome from their perspective alone. In France, despite the high number of certified ADR entities, the French Competent Authority has noted several gaps in the ADR coverage, in particular in the automotive sector.<sup>27</sup>

ADR architectures may also have cracks and gaps of various nature. In Spain like in France, consumers experiencing problems relating to financial services or insurance may have to address their complaints to different entities depending on the nature of their problems. In Belgium, the residual ADR entity (*Service de médiation pour le consommateur / Consumentenombudsdienst*) highlighted in its 2020 annual report that several ADR entities still propose partial sectorial coverage, which impairs consumer navigability and create uncertainties as to which ADR entity is competent for solving consumer disputes.<sup>28</sup>

### 3.3. The way forward: simpler and more coherent ADR landscapes

Experience gained so far tends to show **that some ADR models and architectures tend to perform better than others, limit the risk of gaps in coverage and improve navigability for all stakeholders.**<sup>29</sup> This is notably the case of models built around a limited number of ADR bodies (often ombudsman-like ADR schemes) covering sectors in their entirety and complemented with a residual ADR entity acting as a safety net, which means dealing with complaints that are not falling within the remit of another competent ADR entity.

<sup>25</sup> CECMC Rapport d'activité 2019-2021, October 2021, p.26:

[www.economie.gouv.fr/files/files/directions\\_services/mediation-conso/CECMC\\_RA2019-2021\\_WEB2\\_0.pdf](http://www.economie.gouv.fr/files/files/directions_services/mediation-conso/CECMC_RA2019-2021_WEB2_0.pdf)

<sup>26</sup> Which? *Are Alternative Dispute Resolution schemes working for consumers?* (Policy Report 2021), p. 4.

<sup>27</sup> Idem, p. 26.

<sup>28</sup> [https://mediationconsommateur.be/sites/default/files/content/download/files/cod-jaarverslag\\_2020-fr-def-lr\\_4.pdf](https://mediationconsommateur.be/sites/default/files/content/download/files/cod-jaarverslag_2020-fr-def-lr_4.pdf)

<sup>29</sup> The Geschillencommissie in the Netherlands and the National Board for Consumer Disputes (ARN) in Sweden are usually cited as examples of well-structured ADR landscapes.

This model has been followed in some Member States<sup>30</sup> and has several advantages. First, it facilitates consumers and traders' navigability as sectorial ADR entities can act as clear "go-to" points for stakeholders when things go wrong. Second, sectorial ADR entities may more easily develop their expertise over an entire sector and may be in a better position to monitor markets and to detect systemic patterns. Therefore, sectorial ADR entities are often better suited to ensure the cooperation with enforcement authorities that is foreseen under Art.17 of the Consumer ADR Directive

Therefore, we call on the European Commission and the Member States to:

- **Promote simpler and more rationalised ADR landscapes and architectures.** This for instance could be done via a sharing of information on well-functioning ADR landscapes/models and a sharing of best practices between countries and/or sectors.
- **Promote ADR architectures structured around a limited number of sectorial ADR entities covering sectors in their entirety** and complemented with a residual ADR entity acting as a safety net.

## 4. Oversight of ADR entities: enhancing supervision

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### 4.1. Current state-of-play

The consumer ADR Directive left to the Member States the possibility to decide on their model for the oversight of ADR entities. Some Member States have established one Competent Authority in charge of supervising ADR bodies across all sectors. For example, France has set up a specific entity for the purpose of certifying and monitoring all consumer ADR entities operating in France (known as the *Commission d'Evaluation et de Contrôle de la Médiation de la Consommation* or CECMC). The secretariat of the CECMC is run by the French consumer authority (DGCCRF). Other countries have established several Competent Authorities. This is for example the case of the UK, Italy or Spain where a network of Competent Authorities is in charge of supervising ADR entities depending on the sector in which the ADR entities operate.<sup>31</sup>

### 4.2. What are the issues?

The oversight of ADR entities raises two main concerns. The first regards the way the oversight is organised at national level. It is noteworthy that gaps in the supervision of ADR entities are likely to occur when this task is assigned to several Competent Authorities **behaving differently and applying different standards**. For example, the UK counts 8 Competent Authorities supervising ADR bodies, but all have taken very different approaches to this role.

The second issue regards Competent Authorities' **effective control during the accreditation processes and then during subsequent monitoring**. In some countries or sectors, ADR entities are closely monitored and their compliance with the quality requirements are regularly assessed. For example, Sveriges Konsumenter highlights that certified ADR entities in Sweden may see their certification revoked by the Board of Appeal when they do no longer comply with their obligations. In France, the CECMC de-registered

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<sup>30</sup> e.g., Austria.

<sup>31</sup> For example, in the UK, the Civil Aviation Authority is the competent authority for ADR entities in the airlines sector, the Gambling Commission is the competent authority for ADR entities in the gambling sector, etc. The CTSI is the residual competent authority and is also in charge of coordinating the network of UK/EU competent authorities.

several ADR entities in the past because of their lack of compliance with the quality requirements. However, in other countries, supervision may be lacking. **A lack of competent authorities' resources may often explain this situation.** In the UK, Which? has noted that "the CTSI, which is the competent Authority for ADR bodies in non-regulated sectors has significantly few resources and powers to oversee a much larger number of schemes (...)".<sup>32</sup>

#### 4.3. The way forward: Competent Authorities with sharper teeth

Discussions to strengthen the oversight of ADR entities are ongoing in some European countries. For example, in a draft legislation reforming consumer protection, the UK government has announced its intent to strengthen the "the existing accreditation framework to ensure a common set of standards are applied and that providers can be held accountable by the Competent Authority".<sup>33</sup>

Therefore, we call on the European Commission and the Member States to strengthen the oversight of ADR entities by Competent Authorities by:

- **Ensuring that Competent Authorities have sufficient resources** enabling them to perform their tasks effectively.
- **Requiring Competent Authorities to conduct more frequent investigations** into certified ADR entities.
- **Requiring Competent Authorities to publish annual reports** summarizing their activities and recommendations for ADR entities.
- **Strengthening the European network of Competent Authorities** to facilitate the sharing of best practices and knowledge.

### 5.Traders' participation and compliance: solving the Achilles' heel of consumer ADR

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#### 5.1. Traders' participation in ADR procedures

##### 5.1.1. Current state-of-play

The 2013 Consumer ADR Directive did not impose any obligation on traders to participate in ADR procedures. However, it left Member States the possibility to make traders' participation compulsory. As a consequence, **the rules differ significantly across Europe.** In some countries (or sectors within the same country), traders' participation is mandated by law. For example, Portugal made traders' participation in ADR mandatory in some specific sectors<sup>34</sup> and when disputes do not exceed € 5,000<sup>35</sup>. France requires all traders (regardless of their size) to adhere to an ADR entity of their choice. In other sectors/countries, trader participation is made compulsory not by law but because the trader is part of a professional organisation making it mandatory for its members to sign up to an ADR body. In other situations, traders' participation remains voluntary. 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

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<sup>32</sup> Which? Are Alternative Dispute Resolution schemes working for consumers? (Policy Report 2021), p. 6.

<sup>33</sup> 'Reforming competition and consumer policy' consultation: UK Government response: <https://www.gov.uk/government/consultations/reforming-competition-and-consumer-policy/outcome/reforming-competition-and-consumer-policy-government-response>

<sup>34</sup> Law 23/96 of 26 July (Lei dos serviços públicos).

<sup>35</sup> [www.consumidor.gov.pt/comunicacao/noticias/conflitos-de-consumo-ate-5000-sujeitos-a-arbitragem-necessaria.aspx](http://www.consumidor.gov.pt/comunicacao/noticias/conflitos-de-consumo-ate-5000-sujeitos-a-arbitragem-necessaria.aspx)



consumer (as 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.

### 5.1.2. What are the issues?

In 2019, the European Commission noted that “while overall traders’ participation in ADR has slowly but steadily increased since 2014, currently only one in three retailers is willing to use ADR. This is clearly insufficient (...)”.<sup>36</sup> The European Commission further stressed that “in a number of regions or retail sectors the ADR models currently offered yield only insufficient participation rates for traders”.<sup>37</sup>

With regards to the UK, Which? has highlighted that “there is no mandatory ADR system for some sectors where there are high-value complaints. For sectors where consumers have most to lose, including significant purchases and essential services, schemes should be mandatory for business to join (...)”.<sup>38</sup> Which? also stressed that “the aviation sector stands out among regulated sectors for not having mandated membership of an ADR scheme. The impact of this was starkly illustrated when Ryanair withdrew from AviationADR after the scheme made decisions the airline did not like. Other airlines have also decided not to be members of an ADR scheme, leaving millions without access to ADR”.<sup>39</sup> With regard to Bulgaria, BNAAC stresses that many traders remain indifferent to ADR and that it is extremely difficult to convince them to participate in ADR procedures. All of this contributes to a vicious circle: traders’ unwillingness to participate in ADR procedures prevents them from gaining experience, which ultimately strengthens their reluctance to use ADR.

In areas where traders’ participation is mandated by law, traders may still decide not to effectively participate in the ADR procedure when problems are brought up by consumers. In France for example, approximately 10% of traders still refuse to participate in ADR procedures.<sup>40</sup> In the automotive sector, professionals have refused to participate in ADR procedures 621 times out of 673 admissible requests.<sup>41</sup> In Slovakia, SOS Poprad has reported that traders only have an obligation to respond to the ADR entity but are not obliged to participate in the subsequent ADR procedure. Therefore, traders may simply state that they do not agree with the argumentation submitted by the consumer to avoid the ADR procedure.<sup>42</sup>

### 5.1.3. The way forward: making ADR mandatory

**Consumer ADR can yield higher results when traders are required to participate in the ADR procedure and when they do so in good faith.** Trader’s participation in ADR procedures should be compulsory in all sectors. At the very least, traders’ participation should **be compulsory in sectors with high-value claims and in those generating a high number of consumer complaints** (e.g., airlines). In the UK, the Consumers and Markets Authority (CMA) has taken the view that mandatory ADR should be adopted “across all essential markets including air travel and those sectors where consumers are hugely vulnerable due to information asymmetries”.<sup>43</sup>

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<sup>36</sup> Report from the European Commission on the application of Directive 2013/11/EU, COM(2019)425 final, 25 September 2019, p. 10.

<sup>37</sup> *Idem*.

<sup>38</sup> *Idem*.

<sup>39</sup> Which?, *Are Alternative Dispute Resolution Schemes working for consumers?*, 17 May 2021, p. 6 (available at: [www.which.co.uk/policy/consumers/7428/adrschemes](http://www.which.co.uk/policy/consumers/7428/adrschemes)).

<sup>40</sup> CECMC, *Rapport d’activité 2019-2021*, October 2021.

<sup>41</sup> UFC-Que Choisir, ‘Ups and downs of consumer ADR in France’, 16 June 2021.

<sup>42</sup> BEUC, *Stepping up the enforcement of consumer protection rules*, 11 September 2020.

<sup>43</sup> CMA, *Reforming Competition and Consumer Policy, Driving growth and delivering competitive markets that work for consumers*, (4 October 2021):

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1022615/Reforming\\_Competition\\_and\\_Consumer\\_Policy\\_publication\\_4.10.21.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1022615/Reforming_Competition_and_Consumer_Policy_publication_4.10.21.pdf), p. 60

It is also noteworthy that several EU legislations (or draft legislations) have made traders' participation in ADR mandatory. This is for example the case of Art. 26 of EU Directive 2019/944 on common rules for the internal market for electricity or of Art. 18 of the draft EU Digital Services Act (as initially proposed by the Commission), which provides that "online platforms shall engage in good faith, with the body selected with a view to resolving the dispute and shall be bound by the decision taken by the body".<sup>44</sup>

Competent Authorities supervising ADR entities should more systematically require ADR entities to investigate, and where needed, to report on those traders that are systematically refusing to participate in ADR procedures.<sup>45</sup> Traders should be required to justify their reasons for refusing to take part in an ADR procedure and Competent Authorities should have the possibility to impose fines for repeated and/or unjustifiable refusal to participate in ADR procedures.

Therefore, we call on the European Commission and the Member States to:

- **Make traders' participation in ADR mandatory in all sectors.**
- **At the very least, make traders' participation mandatory in sectors yielding the highest number of consumer complaints (e.g., transports).**
- **Require traders to participate in good faith in ADR procedures.**
- **Require ADR entities to report to Competent Authorities traders who systematically and unduly refuse to participate in ADR procedures.**
- **Require Competent Authorities to publicly disclose the names of traders who systematically and unduly refuse to participate in ADR procedures.**

## **5.2. Traders' compliance with the outcomes of ADR procedures**

### **5.2.1. Current state-of-play**

Traders' compliance with the final outcomes of ADR procedures is uneven across Europe and within Member States. The rules differ a lot in Europe. In some models, the decisions of ADR bodies are binding on traders. In many others, the outcomes of ADR procedures are non-binding. They remain recommendations that traders are free to follow.

### **5.2.2. What are the issues?**

Traders' compliance rates differ a lot across Europe and depending on sectors. In Italy, Altroconsumo reports that traders' compliance rate tends to be generally high. Likewise, in Sweden, traders usually comply with the decisions of the General Complaints Board (*Allmänna reklamationsnämnden* or "ARN"). Conversely, in the UK, Which? stressed the lack of traders' compliance with the outcomes of ADR procedures in many sectors. In Latvia, most ADR entities issue non-binding recommendations, and the overall compliance rate depends on the behaviour of traders. This situation may frustration among consumers who have the feeling that they have wasted their time during the ADR procedure. Ultimately, traders' non-compliance with the outcomes of ADR procedures is likely to significantly undermine consumer trust in ADR.

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<sup>44</sup> Proposal for a Regulation of the European Parliament and of the Council on a Single Market for Digital Services (Digital Services Act) and amending Directive 2000/31/EC COM(2020) 825 final, 15 December 2020.

<sup>45</sup> CECMC, Plenary meeting, 9 October 2020 (available at: [www.economie.gouv.fr/mediation-conso/processus-de-meditation-de-la-consommation](http://www.economie.gouv.fr/mediation-conso/processus-de-meditation-de-la-consommation)).



### 5.2.3. The way forward: incentivising traders to comply

Some ADR entities or professional organisations have adopted techniques to incentivise traders to comply with the outcome of ADR procedures. For example, in the UK, some ADR entities (e.g., the Motor Ombudsman) use penalty point systems where traders may be expelled in case of repeated non-compliance with the outcome of the ADR procedures.<sup>46</sup> Others use “naming and shaming” techniques. For example, the French financial ombudsman (*Médiateur de l’AMF*) and the French telecom ombudsman (*Médiateur des télécommunications électroniques*) have in the past disclose in their annual reports the names of traders refusing to comply systematically with their recommendations. The Irish Financial Ombudsman may also ‘name and shame’ companies in its annual reports in situations where a financial service provider has been targeted by three or more complaints that have been upheld, substantially upheld or partially upheld in the preceding financial year. In Finland, the consumer affairs magazine cooperating with our Finnish member organisation *Kuluttajaliitto -Konsumentförbundet* may list the names of the traders not complying with the outcome of ADR procedures.<sup>47</sup> Likewise, in Sweden, non-compliant traders may be put on a blacklist in the magazine *Råd & Rön*. Before the publication of the list, the magazine contacts the traders and gives them a deadline to comply. As a result, approximately 10% of the contacted traders finally agree to comply. In Lithuania, the Consumer Dispute Resolution Commission may put the traders failing to comply with its decisions within 30 days on a publicly available blacklist. Our Latvian member LPIAA then contacts the concerned traders, and where relevant, may communicate the information via different channels (i.e., social media, website, press release).

Therefore, we call on the European Commission and the Member States to:

- **Require ADR entities to report to Competent Authorities traders who systematically and unduly refuse to comply with the outcomes of ADR procedures.**
- **Require Competent Authorities to publicly disclose the names of traders who systematically and unduly refuse to comply with the outcomes of ADR procedures**

## 6. Consumer awareness: better signposting consumers

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### 6.1. Current state-of-play

The Consumer ADR Directive provides that the Member States must ensure that traders established on their territories inform consumers about the ADR entity by which they are covered. This information should be communicated in a clear, comprehensible, and easily accessible format. Traders should notably indicate the website of the relevant ADR entity(ies). The Directive also stresses that the European Commission and the Member States must ensure an appropriate dissemination of the information on how consumer can access ADR entities.

Several Member States (or sectors within the Member States) have taken steps to inform consumers about ADR and the role played by ADR entities. For example, in March 2022, our French member CLCV organised a joint online workshop with the French Energy ombudsman (*Médiateur national de l’énergie*) to present the services proposed by the

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<sup>46</sup> Independent Compliance Assessment Panel (ICAP) Reports: [www.themotorombudsman.org/useful-information/media-publications/reports/independent-compliance-assessment-panel-reports-icap](http://www.themotorombudsman.org/useful-information/media-publications/reports/independent-compliance-assessment-panel-reports-icap)

<sup>47</sup> <https://kuluttaja.fi/musta-lista/>

ombudsman to consumers in the context of the energy crisis.<sup>48</sup> In Portugal, the act implementing the consumer ADR Directive<sup>49</sup> provides for the Consumer Conflicts Arbitration Centres (*Centros de Arbitragem de Conflitos de Consumo*) to promote (on average) monthly initiatives with a view to advertise consumer arbitration. However, in practice, the Portuguese consumer organisation DECO stresses that many of them do not have sufficient resources to do so. Other ADR entities have advertised their work in the media, while a few have also taken steps to reach out to consumers on the ground. This is notably the case of the Ombudsman Services in the UK with its so-called “Ombudsvan” initiative, which was a vehicle travelling the country to inform consumers in public areas and to advise them on their problems. Similar initiatives have also taken place in Spain.

## 6.2. What are the issues?

Despite the activities highlighted above, the situation remains very uneven across Europe. In a first group of countries, including the UK (in some sectors at least), Sweden, Italy or the Netherlands, the level of consumer awareness tends to be high, if not very high. In a second group, including France, Belgium, Czech Republic or Latvia, the level of consumers awareness tends to remain low but has nevertheless started to progressively increase in the past few years. Finally, in a third group including countries like Romania, awareness remains usually low, if not very low. Although the Consumer ADR Directive imposed on traders an obligation to clearly inform consumers about the ADR entity by which they are covered, **many still do not comply with this obligation or, if they do so, may provide this information in a misleading or unclear way.** The information may for instance be hidden in the middle of lengthy Terms & Conditions and other documentation. In the UK, Which? has stressed the case of Sainsbury’s which provided a link to a specific ADR scheme despite the fact that they were not members of that scheme and did not use it to resolve their disputes.<sup>50</sup>

In parallel, **ADR should be a dispute resolution mechanism available for all consumers** and not limited to certain categories. ADR should particularly be advertised to vulnerable consumers who often may be the ones who may need their services the most. Research conducted in several countries tends to show that well-educated, middle-aged, and middle-class consumers are those who remain the most likely to be well-informed about ADR. As Which? has noted, “the age, income, and educational profile of people using ADR suggest that more should be done to reach younger, low-income groups with lower educational qualifications”.

*“The age, income, and educational profile of people using ADR suggest that more should be done to reach younger, low-income groups with lower educational qualifications.” (Which? 2021)*

Finally, even when consumers are aware about the availability of ADR entities to solve their problems, **many still do not have a clear understanding of how ADR entities work in practice and what they may expect from ADR entities.** In some countries, consumers still have erroneous expectations about the role of ADR entities and believe that the latter act as a sort of consumer protection agencies having the power to impose sanctions on traders. Some consumers may also reach out to ADR entities for the purposes

<sup>48</sup> [www.clcv.org/energies/gaz-electricite-webinaire-avec-le-mediateur-national-de-lenergie](http://www.clcv.org/energies/gaz-electricite-webinaire-avec-le-mediateur-national-de-lenergie)

<sup>49</sup> Law No. 144/2015 of 8 September 2015.

<sup>50</sup> Which?, *Are Alternative Dispute Resolution Schemes working for consumers?*, Policy Report April 2021, p. 6.

of signalling or reporting unlawful behaviour although the primary role of ADR entities remains to solve consumer disputes.<sup>51</sup>

Furthermore, many consumers continue to be confused by the procedural rules of ADR entities. In the UK, Which? found that only 20% of UK consumers understand how dispute resolution schemes work.<sup>52</sup> The lack of understanding for the functioning of ADR entities is notably reflected in the **high number of inadmissible complaints** that many ADR providers continue to receive every year. In France, the CECMC reported that more than half of the 153,600 complaints submitted to ADR entities in 2020 were inadmissible.<sup>53</sup> In approximately 70% of cases, this was because consumers did not contact traders before reaching out to the ADR entity. Similar problems with inadmissible complaints can be found in many other countries.<sup>54</sup>

### 6.3 The way forward: strengthening consumer awareness and education

Information about the roles and the functioning of consumer ADR entities as well as the signposting of consumers should be improved. An online portal may be useful to signpost consumers to the relevant ADR providers. Such platforms would also explain the different options that consumers may have for getting redress and should be connected/interoperable with the EU ODR platform. In addition, consumer ADR entities should ensure that their procedural rules are accessible in a clear and easily accessible way for consumers.

Therefore, we call on the European Commission and the Member States to:

- **Set up online portals at national level to better signpost and inform consumers about ADR.** These platforms should be connected and interoperable with the EU ODR platform.
- **Require Competent Authorities to check that ADR entities provide information on their rules of procedure** in a clear and easily accessible way to consumers.
- **Support initiatives from ADR entities and Competent Authorities aiming at reaching out to consumers on the ground and in public areas** to inform them about consumer ADR.

## 7. Consumers accessibility: facilitating the consumer journey

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### 7.1. Current state-of-play

The Consumer ADR Directive provided for several rules to facilitate consumers' accessibility to ADR entities. Among others, Member States were free to make ADR procedures free of costs or to impose a nominal fee. France and Spain made consumer ADR compulsorily free of cost for consumers (this is also the case in Czech Republic, Lithuania, and Finland). In Slovakia, fees for consumers are limited to €5. In Denmark, fees by the Danish residual entity may amount to DKK 100 (approximately €13) and between DKK 150 to DKK 500 (approx. €20-€67) in other areas.

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<sup>51</sup> Report of the Service de la médiation de la consommation 2020.

<sup>52</sup> *Idem*.

<sup>53</sup> CECMC, *Rapport d'activité 2019-2020*, October 2021.

<sup>54</sup> See e.g., the number of admissible complaints reported by the Consumer Mediation Ombudsman in Belgium in 2018 or 2019 (39% in 2019, 60% in 2018). These percentages are decreasing, but very slowly. In 2020, the Consumenten ombudsdienst Jaar-verslag reports 34% inadmissible requests: [cod-jaarverslag\\_2020-nl-def-lr\\_2.pdf](https://www.consumerombudsman.be/cod-jaarverslag_2020-nl-def-lr_2.pdf) (consumerombudsman.be), p. 20.

The Directive also provided that the outcomes of ADR procedures should be issued within a period of 90 days from the date on which the ADR entity has received a complete complaint file, except in complex cases.

## 7.2. What are the issues?

Several hurdles continue to limit consumers' access to ADR. A first one regards the costs of ADR procedures. **Fees may deter consumers from bringing their complaints to ADR entities**, especially when the amount of the complaint at stake is already low, or when the complaint is brought by financially vulnerable consumers. A second issue regards **the unnecessary procedural burden for bringing a complaint**. For example, in France, UFC Que Choisir has stressed that, for disputes taking place in the banking sector, consumers must first contact their bank advisors or customer services and then have to follow multiple mandatory steps before being finally able to reach out to the ADR body.<sup>55</sup> This complex process is largely unknown to the majority of consumers. As a consequence, many consumer complaints end up being inadmissible.<sup>56</sup> In the UK, the CMA has highlighted that "reducing barriers to participation in ADR schemes, for example ensuring they are zero or below cost and that accessibility and advice are prioritised, may be helpful in improving participation for vulnerable consumers".<sup>57</sup>

**Another accessibility issue regards the length of the ADR procedure.** In some countries/sectors, consumers still have to wait for a long time (if not a very long time) before the outcome of the ADR procedure. For example, the Finnish Consumer Disputes Board dealt with approximately 5,400-6,100 complaints in the period 2018-2019. In 2018, the time it needed to reach an outcome was 13.2 months on average and sometimes up to two years. Such a long waiting time may discourage many consumers (especially when the value of their complaint is already low) and may deter them from using ADR again. Art.8(e) of the Consumer Directive provides that "the outcome of the ADR procedure is made available within a period of 90 calendar days from the date on which the ADR entity has received the complete complaint file". **However, the problem is that the Consumer ADR Directive does not clearly define what a "complete complaint" is.** ADR entities are thus free to decide when they consider a complaint to be "complete". When ADR entities describe their activities, they usually use various methodologies when it comes to indicating the "average length" to solve complaints. Hence the information conveyed may be misleading and may give to consumers an erroneous idea of the time needed to solve a dispute. For example, figures from AviationADR in the UK suggest that the ADR entity takes an average of 76 days to complete a case. However, information provided in a review conducted on behalf of the CAA show that in 2019 it took the ADR entity an average of 50 days from a complaint being made to the full file being received. Therefore, from the point of view of the consumer the average time cases took was more like 126 days, rather than the initially announced 76 days.<sup>58</sup>

**Finally, when it comes to accessibility, one should be careful with the "digital hype" nowadays surrounding the ADR sector.** On a more general level, the digitalisation of procedures raises important accessibility problems as all individuals are not equal in this area and may not possess the sufficient skills to submit their complaints digitally. For example, according to a report published in 2022 by the Defender of Rights (*Défenseur des Droits*) in France, a significant percentage of the population still does not

<sup>55</sup> UFC Que Choisir, 'Médiation bancaire – un grand ménage s'impose', 1 July 2021 [www.quechoisir.org/action-ufc-que-choisir-mediation-bancaire-un-grand-menage-s-impose-n92840/](http://www.quechoisir.org/action-ufc-que-choisir-mediation-bancaire-un-grand-menage-s-impose-n92840/)

<sup>56</sup> A 2021 report from the *Comité Consultatif du Secteur Financier* has stressed that the problem of "premature complaints" submitted to ADR bodies amounts to 50% of the total inadmissible complaints in the sector Rapport Annuel du Comité Consultatif du secteur financier :

[https://www.ccsfin.fr/sites/default/files/medias/documents/ccsf\\_ra2020\\_web.pdf](https://www.ccsfin.fr/sites/default/files/medias/documents/ccsf_ra2020_web.pdf), p. 46.

<sup>57</sup> CMA, Reforming Competition and Consumer Policy, Driving growth and delivering competitive markets that work for consumers, (4 October 2021): [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1022615/Reforming\\_Competition\\_and\\_Consumer\\_Policy\\_publication\\_4.10.21.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1022615/Reforming_Competition_and_Consumer_Policy_publication_4.10.21.pdf), p. 67.

<sup>58</sup> Which?, *Are Alternative Dispute Resolution Schemes working for consumers?*, Policy Report April 2021,

use online procedures, “and amongst those who use them, 13% have difficulty doing so alone”.<sup>59</sup> The study further stresses that “according to the Arcep/Credoc 2021 digital barometer, 1 out of 10 people do not have an internet access, and 35% of the population encounters difficulties when using digital tools in one way or another”.<sup>60</sup> Arguably, digital tools may, to some extent, also facilitate consumers access to ADR entities. They may also allow ADR entities to reduce their costs, in particular when digital tools are used for pre-screening complaints or checking admissibility. However, it is important to keep here in mind the journey that consumers may experience when they have problems. Most of the time, many will first have to go through several burdensome automatic complaint-handling systems set up by traders before being finally able to submit their complaints to an ADR entity. It is therefore important that consumers keep the possibility to talk to a person and not to a robot when seeking for advice and when they submit their complaints to ADR entities. This direct contact with ADR entities should be possible at the very early stages of the procedure to give consumers the possibilities to explain their problems.

### 7.3. The way forward: a simplified consumer journey

We call on the European Commission and the Member States to:

- **Ensure that all unnecessary procedural barriers are removed.**
- **Make ADR free of charge for consumers.**
- **Clarify what a “complete complaint” means according to Ar. 8(e) of the Consumer ADR Directive and clarify that the time given to an ADR entity to solve a complaint start the moment consumers have sent their complaint to the ADR entities.**
- **Require Competent Authorities to check that ADR entities respect the legal timeframe set down in the Directive for delivering the outcomes of the ADR procedures.**
- **Ensure that the digitalisation of ADR entities does not prevent consumers from contacting ADR staff in person and off-line when seeking advice and submitting their complaints.** Consumers’ needs and expectations should always remain the starting point of any digitalisation process for ADR procedures.

## 8. The EU ODR Platform: making it work for consumers

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### 8.1. Current state-of-play

Regulation 524/2013 (the ODR Regulation) set up an online platform hosted by the European Commission (the EU “ODR platform”).<sup>61</sup> It applies to consumer disputes arising out from the online purchases of products or services. The ODR platform is available to the general public since 15 February 2016. Since 1 July 2017, it is also accessible for disputes involving consumers and traders from EEA states. The ODR platform intends to serve as a single point of entry for consumers and traders. More specifically, the EU ODR Platform works as a referral system to all the ADR bodies certified across Europe. Regardless of its name, the online platform does not intend to “resolve” complaints but rather serves as a match-making platform. The resolution of the dispute as such is carried out by the dispute

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<sup>59</sup> Défenseur des Droits, [Dematerialisation of public services : three years after – where are we?](#), 2022

<sup>60</sup> *Idem*, p.26

<sup>61</sup> Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes.

resolution bodies that are listed on the platform. The process on the ODR platform follows several deadlines. Consumers submit their complaints via the online form and the trader is then automatically informed and asked to suggest an ADR body. Both parties have then a period of 30 days to agree on a competent ADR entity. If the online trader does not propose an ADR body or if no agreement can be reached during the given timeframe, the complaint is automatically closed. If the consumer accepts the proposed ADR entity, the ODR platform automatically transfers the complaint to the agreed ADR entity. After the ADR body has received all documents from the parties, it should review the complaint and propose a solution within a period of 90 days.

## 8.2. What are the issues?

More than five years after its launch, **the EU ODR platform is still not a tool supporting the use of ADR across Europe.**

**The process on the ODR platform largely depends on traders' behaviour.** Already from the very start, consumers are required to fill in a form with the trader's details, which are often unavailable. The platform includes a search engine that assists users in finding the details of a few major traders (e.g., Apple or Ryanair) but it does not include the relevant information for many traders. In theory, Art. 14 of the ODR Regulation requires EU online traders to provide their email addresses as well as an easily accessible link to the ODR platform to visitors of their website. In practice however, **only few traders comply with these information obligations.** Even when they do so, this information remains not easily accessible. During a web-scraping exercise conducted in 2018 and targeting more than 20,000 EU traders' websites, the European Commission found that only 28% of the investigated traders had included a link to the ODR platform on their website. In 58% of the cases, the link to the EU ODR platform was lost in lengthy Terms & Conditions.<sup>62</sup> Furthermore, even when traders fulfil their obligations and include a link to the EU ODR platform, this does not necessarily imply that they have agreed to respond to the complaint via the platform. Ultimately, the information displayed on traders' websites ends up creating a false sense of security that is misleading for consumers.

**The annual statistical reports on the functioning of the ODR platform show a very modest response rate from traders to consumers' attempt to resolve out-of-court disputes:** 83% of the complaints submitted by consumers through the ODR platform are automatically closed, with no action taken, because traders have remained silent during the 30 days, while 11% are closed because traders refuse to participate in the ADR procedure.<sup>63</sup>

The reports also show that traders contact consumers outside the ODR platform to start individual negotiations, after refusing to participate in the ADR procedure. For this reason, in July 2019, the European Commission reviewed the ODR platform and introduced a new functionality called "direct talk" allowing consumers and traders to settle their dispute bilaterally directly on the ODR platform. As a result, throughout 2020, only a small proportion of visitors to the platform submitted a finalised complaint (approximately 17,400), and the majority (approximately 30,000) used the "direct talk" functionality.<sup>64</sup>

**This is however no longer an ADR procedure with the intervention of a certified third-party. As a consequence, there are no guarantee that the resolution of the dispute be fair for consumers, especially considering the power imbalances between the parties.**

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<sup>62</sup> Online Dispute Resolution: Web-Scraping of EU Traders' Websites, p. 3:  
[https://ec.europa.eu/info/sites/default/files/odr\\_webscraping\\_executive\\_summary\\_en.pdf](https://ec.europa.eu/info/sites/default/files/odr_webscraping_executive_summary_en.pdf)

<sup>63</sup> Functioning of the European ODR Platform Statistical report (December 2020):  
[https://ec.europa.eu/info/sites/default/files/odr\\_report\\_2020\\_clean\\_final.pdf](https://ec.europa.eu/info/sites/default/files/odr_report_2020_clean_final.pdf) p. 4.

<sup>64</sup> Functioning of the European ODR Platform Statistical report (December 2021):  
<https://ec.europa.eu/info/sites/default/files/2021-report-final.pdf>, p. 3.



Statistics show a rise in unique visitors: from 2.8 million in 2019 to 3.3 million in 2020, with an average of 275,000 unique visitors per month.<sup>65</sup> **Yet, the level of consumers' awareness and confidence on the platform tends to remain low.** In cross-border cases (representing approximately 50% of the complaints submitted via the ODR platform), language remains an issue as many ADR entities may not handle complaints submitted in a foreign language. Despite the platform providing an automated translation tool, to translate outcomes and settlements, only the communication with the ODR platform is in a language that consumers master. Once the complaint is submitted to the ADR entity, the follow-up communication, and the dispute resolution process itself are carried out in the language chosen by the ADR entity, which often will be the language chosen by the trader. In domestic disputes, consumers' lack of confidence may be due to the overriding rational apathy in low-value claim disputes.

### 8.3. The way forward: bringing the EU ODR platform to the next level

The EU ODR platform importantly relies on traders' behaviour. Therefore, authorities should continue to periodically monitor traders' compliance with their information duties about the availability of the ODR platform. Furthermore, traders should be required to disclose on their website whether they are willing to collaborate with consumers through the ODR platform in case of complaints. Traders should inform consumers in a clear way when they do not intend to resolve their disputes via the EU ODR platform and also clearly state the other pathways that are available to consumers to get redress. As also recommended in the past, the European Commission should also consider extending the scope of the platform to disputes pertaining to offline contracts.<sup>66</sup>

Finally, a better inclusion of consumer organisations within the EU ODR platform may help its functioning in the future. For example, consumers could have the possibility to decide to be assisted by a consumer organisation during the process (it is noteworthy that representation/assistance appears already possible under point 4 of the Annex of the ODR Regulation). When filling in the form on the EU ODR Platform, the platform could have a specific button asking consumers whether they would like to be represented by a consumer organisation. If consumers respond positively, a box/page would be displayed with a list of all consumer associations available to assist them during the process. After selecting it, the platform would automatically inform the association.

Finally, consumer information and awareness about the availability of the EU ODR platform should be improved. **The EU ODR platform could become a point of entry for consumers seeking redress.** This would require adding new functionalities to the platform. It is positive that the EU ODR platform already provides consumers with information about their rights in different areas<sup>67</sup>. It should also provide clearer information on the different pathways available to consumer for getting redress.

Therefore, we call on the European Commission and the Member States to:

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<sup>65</sup> Functioning of the European ODR Platform Statistical report (December 2021), p. 2.

<sup>66</sup> It was already recommended by the DG Internal Policies in 2012:

[www.europarl.europa.eu/document/activities/cont/201204/20120417ATT43146/20120417ATT43146EN.pdf](http://www.europarl.europa.eu/document/activities/cont/201204/20120417ATT43146/20120417ATT43146EN.pdf), p. 11 ("if a larger number of users submits a larger number of disputes to the Platform, there will be the incentive for the ADR entities to compete by offering better services through the Platform, larger feedback will be generated, which will provide better information, etc. Thus, by expanding the scope of the Platform it is likely that, in exchange for a very limited increase in costs, there would be both an increase in the number of users as well as an increase in the benefit each user would obtain from the Platform").

<sup>67</sup> <https://ec.europa.eu/consumers/odr/main/?event=main.consumer.rights>

- **Ensure that Competent Authorities conduct the necessary checks to verify that traders correctly inform consumers about the availability of the EU ODR platform.**
- **Require traders to clearly inform consumers whether they are willing to use the EU ODR platform.** If not, traders should be required to signpost consumers to the other relevant pathways to obtain redress.
- **Improve the information available on the EU ODR platform,** including information about consumer rights in sectors yielding the highest number of consumers complaints and information about all the pathways available to consumers to obtain redress.
- **Better integrate consumer organisations into the functioning of the EU ODR platform.**



***Further reading:***

*BEUC, [Stepping up the enforcement of consumers protection rules](#), September 2020*



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