

## Alternative dispute resolution for consumers

Impact assessment (SWD(2023) 335, SWD(2023) 337 (summary)) accompanying a Commission proposal for a Directive of the European Parliament and of the Council amending Directive 2013/11/EU on alternative dispute resolution for consumer disputes, as well as Directives (EU) 2015/2302, (EU) 2019/2161 and (EU) 2020/1828, COM(2023) 649

This briefing provides an initial analysis of the strengths and weaknesses of the European Commission's [impact assessment](#) (IA) accompanying the above-mentioned [proposal](#), put forward on 17 October 2023 and referred to the European Parliament's Committee on the Internal Market and Consumer Protection (IMCO).

Alternative dispute resolution (ADR) allows for a fast, low-cost alternative to judicial proceedings for disputes between consumers and traders in the internal market. ADR may take different forms, such as mediation, arbitration or ombudsman schemes, and always involves a quality-certified [ADR entity](#). The current framework comprises [Directive 2013/11/EU](#) on alternative dispute resolution for consumer disputes ('ADR Directive') and [Regulation \(EU\) 524/2013](#) on online dispute resolution ('ODR Regulation'). While the former is a minimum harmonisation directive, leaving Member States some leeway in the design of their ADR systems, the latter provides for the ODR platform, a single point of entry for the resolution of online disputes.

Recent Commission reports conclude that ADR – and notably cross-border ADR – remains under-used in many Member States.<sup>1</sup> At the same time, consumer markets are undergoing drastic changes, with the effect that consumers increasingly tend to buy online, including from non-EU traders and on online platforms. As a result, cross-border consumer-trader disputes have become more complex and put consumers at a higher risk of unfair trading practices. Against this backdrop, the present initiative aims to strengthen and modernise the existing out-of-court dispute resolution framework through targeted amendments to the ADR Directive.

The amending ADR proposal and accompanying IA were presented in a package together with:

- a [proposal](#) for a regulation repealing the ODR Regulation (EU) No 524/2013 and discontinuing the European ODR platform;<sup>2</sup>
- a Commission [recommendation](#) on quality requirements for dispute resolution procedures offered by online marketplaces and EU trade associations; and
- the second [report](#) on the application of the ADR Directive and ODR Regulation.<sup>3</sup>

The revision of the ADR framework was included in the [2023 Commission work programme](#) (CWP). It also figured in [Annex II](#) of the 2024 CWP, together with the proposed repeal of the ODR Regulation and a large number of other initiatives that aim to rationalise reporting requirements in existing legislation. These initiatives seek to help achieve the 25 % burden-reduction target set out in the Commission's strategic [communication](#) 'Long-term competitiveness of the EU: looking beyond 2030'.<sup>4</sup>

### Problem definition

The IA's problem definition appears comprehensive and well-substantiated (IA, pp. 5-23), and the interlinkages between the problems, their drivers and the consequences are adequately explained.



Quantitative data are provided wherever possible. Drawing on the Commission's ex-post [evaluation](#) and other relevant evidence, the IA identifies **three main problems**.

- 1 **The ADR Directive is not fit for the digital transition, including the growing size of digital markets**, as its scope is limited to '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 EU and a consumer resident in the Union'.<sup>5</sup> Thus, for instance, unfair commercial practices not directly related to a contract are not covered by the ADR Directive, nor are redress mechanisms between consumers and non-EU traders, and private online dispute resolution systems (PODR), which are increasingly common on online platforms (such as Amazon, eBay or booking.com, to name but a few major players).
- 2 **Low engagement in ADR/ODR by traders and consumers** hinders effective redress solutions for low-cost disputes. The IA estimates that at present, only 300 000 cases a year are accepted EU wide as eligible to be resolved through an ADR procedure, which corresponds to a mere 8 % of the potential total (IA, p. 17). Evidence shows that the ODR platform is scarcely used for dispute settling.
- 3 **Uptake of ADR in a cross-border context remains low**, owing to the complex legal and organisational context of cross-border ADR.

In light of the **megatrends** '[increased hyperconnectivity](#)' and '[growing consumption](#)', the IA identifies a number of **problem drivers**:

- rapid growth and concentration of e-commerce and online advertisement;
- increased cross-border shopping, including with traders established outside the EU;
- new types of consumer disputes in digital markets, often going beyond contractual issues, and arising from unfair commercial practices (e.g. misleading advertisement) and lack of pre-contractual information;
- lack of awareness of ADR procedures (among consumers and traders alike);
- costs of ADR procedures; and
- growing use of PODR systems operated by online marketplaces.

## Subsidiarity / proportionality

The initiative is based on Article 114 of the Treaty on the Functioning of the EU (TFEU), the same as the current ADR Directive. It aims to ensure a high level of consumer protection in accordance with Article 169 TFEU. With regard to **subsidiarity**, the IA duly justifies the initiative's necessity and added value, arguing among other things that online shopping operates in a cross-border environment that can only be addressed by EU-level action. The IA emphasises that the initiative would not only benefit consumers but also businesses; for the latter, it would 'reduce litigation costs and foster a level playing field' (IA, p. 25). Although the accompanying [subsidiarity grid](#) claims that the 'impact assessment carried out a proportionality test to ensure that proposed policy options are proportionate based on costs and resources', **proportionality** does not appear to be addressed in the core part of the IA. The IA merely states that, under the preferred option, the principle of proportionality would be observed (IA, p. 46). National parliaments had until 26 January 2024 to perform their [subsidiarity check](#) in line with Article 6 of [Protocol No 2](#) on the application of the principles of subsidiarity and proportionality. No reasoned opinions were received by that deadline.

## Objectives of the initiative

According to the IA, the initiative's **general objective** is twofold: to ensure the proper functioning of the retail single market, and to achieve a high level of consumer protection by enabling

consumers and traders to resolve disputes efficiently and effectively, irrespective of their country of residence or establishment. In addition, the IA identifies three **specific objectives** (SO), which derive directly from the problem definition (IA, pp. 25-26):

- **SO 1:** make the ADR framework fit for the digital markets;
- **SO 2:** increase consumers' and traders' engagement in ADR; and
- **SO 3:** enhance the use of cross-border ADR.

Although the specific objectives are phrased rather generally, the IA does not present any detailed **operational objectives**. Nonetheless, the IA puts forward a limited number of monitoring indicators that would allow measuring the revised directive's success to some extent (see section 'Monitoring and evaluation'). However, the objectives do not seem to meet all of the S.M.A.R.T. criteria of the Better Regulation Guidelines (BRG), according to which objectives should be specific, measurable, achievable, relevant and time-bound. According to the IA (p.63), the initiative supports the achievement of the **UN Sustainable Development Goal** (SDG) #16 (Peace, justice and strong institutions), and in particular target # 16.3 (Promote the rule of law at the national and international levels and ensure equal access to justice for all).

## Range of options considered

The IA presents a well-developed **baseline scenario**, under which the current ADR Directive would remain unchanged. However, it takes new EU legislation into account, such as the [Consumer Rights Directive](#) as last amended in 2019, and the recently adopted [Consumer Credit Directive](#), both establishing new rights consumers may not be able to enforce out of court under the existing ADR Directive (IA, p. 26). Overall, the IA assesses that, under a dynamic baseline scenario with a reference horizon of 10 years, consumers would incur significant losses owing to the steady growth of e-commerce and the simultaneous lack of adequate ADR procedures. These losses are estimated at a volume of €387 million a year or, €3.4 billion over 10 years, considering a 3 % standard discount factor (IA, p. 27).

To tackle the problems outlined above, the IA identifies **four policy options** – including one non-regulatory option – that are assessed against the baseline. Each policy option consists of a seemingly viable set of measures and represents a different degree of ambition. However, the bullet point-style description of the policy options is lacking detail and would have benefited from a more elaborate presentation and reasoning. This issue was also raised by the Regulatory Scrutiny Board (see section below).

The IA is transparent about having discarded one policy option at an early stage, namely a revamping and technical upgrade of the ODR platform. The IA justifies the elimination of this option with its lack of effectiveness (IA, pp. 32-33). Table 1 summarises the examined policy options and the measures proposed to address each of the special objectives (SO). The preferred option is highlighted in blue.

Table 1: Policy options assessed for each specific objective

Policy options (PO)	SO 1: Make ADR fit for the digital market	SO 2: Increase consumer and trader engagement in ADR	SO 3: Enhance cross-border ADR
<b>PO A:</b> <b>Non-regulatory intervention</b> <b>(no changes to the legal ADR framework)</b>	i) Maintain ADR scope; provide training for ADR entities for handling online disputes ii) Promote a self-regulatory approach for online platforms' own PODR services to establish best practices and	i) Support awareness-raising campaigns of Member States to promote ADR ii) Clarify better the sectors with mandatory participation under national law	i) Create standardised templates/forms for ADR entities to handle cross-border disputes electronically ii) Adopt AI tools for instant translation

	common guidelines for online dispute resolution		
<b>POB:</b> <b>Minimal procedural and graphical scope revision ('light-touch revision')</b>	<ul style="list-style-type: none"> <li>i) Maintain ADR scope; provide training to ADR entities for handling online disputes, including rules for dealing with pre-contractual information (option A+)</li> <li>ii) Enable ADR entities to handle disputes between consumers and third-country traders</li> </ul>	<ul style="list-style-type: none"> <li>i) Allow national authorities to publicly disclose identity of retailers who do not engage in ADR</li> <li>ii) Promote use of trust marks for traders participating in ADR</li> </ul>	<ul style="list-style-type: none"> <li>i) Create standardised templates for ADR entities to provide clear information in different languages (option A+)</li> <li>ii) Strengthen quality criteria to ensure that natural persons in charge of ADR are qualified for cross-border disputes</li> </ul>
<b>POC:</b> <b>Targeted amendments to the ADR Directive</b>	<ul style="list-style-type: none"> <li>i) Extend ADR Directive's material and geographical scope to cover any kind of trader-consumer disputes (also covering pre-contractual stages and disputes with traders established in non-EU countries)</li> <li>ii) Oblige online platforms to obtain self-certification attesting that their PODR systems meet the quality criteria of the ADR Directive*</li> </ul>	<ul style="list-style-type: none"> <li>i) Replace ODR platform with new signposting tools that navigate consumers to a competent ADR entity</li> <li>ii) Introduce a 'duty of reply' for traders towards ADR entities</li> <li>iii) Allow ADR entities to bundle similar cases (i.e. the use of collective ADR)</li> </ul>	<ul style="list-style-type: none"> <li>i) Enable European Consumer Centres (ECC) to act as contact points to facilitate consumers' access to ADR entities in cross-border disputes</li> <li>ii) Provide self-certification mechanisms for EU-level trade associations and other relevant bodies; allow them to set up cross-border dispute settlement systems*</li> </ul>
<b>POD:</b> <b>Architectural changes and increased harmonisation</b>	<ul style="list-style-type: none"> <li>i) Extend ADR Directive's material scope (option C)</li> <li>ii) Require Member States to designate a residual entity for cross-border/digital disputes</li> <li>iii) Make ADR Directive's quality criteria mandatory for PODRs (supervised by national competent authorities for ADR)</li> </ul>	<ul style="list-style-type: none"> <li>i) Replace ODR platform with new signposting tools (option C)</li> <li>ii) Oblige Member States to have only one ADR body per retail sector, plus one residual ADR</li> <li>iii) Harmonise ADR procedures</li> <li>iv) Make traders' participation in ADR procedures mandatory</li> <li>v) Allow ADR entities to bundle similar cases (option C)</li> </ul>	<ul style="list-style-type: none"> <li>i) Establish an EU-level mechanism exclusively for ADR cross-border complaints</li> </ul>

Source: Compiled by the author, based on the IA, pp. 29-32. Measures marked with an asterisk (\*) have not been retained in the Commission proposal, but form key provisions of the Commission recommendation complementing the proposal.

## Assessment of impacts

In line with the BRG, the IA assesses the policy options against the baseline scenario in terms of their economic, social and environmental impacts and their effects on fundamental rights. The analysis is mainly qualitative, although the section on economic impacts is also supported by quantitative data. Impacts (including costs and benefits) on stakeholder groups affected – notably consumers, businesses and online platforms, ADR entities, Member States and the European Commission – are taken into account.

The focus of the impact analysis lies on **economic impacts**. The IA expects that extending the ADR Directive's material scope would lead to an increase in ADR cases launched per year (currently 300 000 EU wide). Depending on the PO, this increase is estimated at between 9 000 (PO B) and 200 000 cases (PO C). Making ADR mandatory for traders (PO D) would result in an additional plus of 120 000 eligible ADR cases a year. The IA notes that a higher number of ADR cases would necessarily

translate into higher costs for ADR entities for case handling, although economies of scale could be expected from allowing ADR entities to bundle similar cases. At the same time, the IA is clear that any dispute solved via ADR procedures significantly reduces detriment for consumers.

Under these assumptions, the IA estimates that for the preferred PO C, ADR entities would face additional **costs** of €60 million per year for additional case handling, of which €11 million might be offset through the bundling of cases. Under the same PO, traders, too, would incur costs (€2.6 million annually) prompted by the new duty to reply towards the ADR entity, regardless of whether or not a trader engages in the procedure. Conversely, the **benefits** for consumers (in terms of reduced detriment) are estimated at €33 million a year. The discontinuation of the ODR platform would save the Commission around €500 000 a year (IA, pp. 37-39).

Interestingly, the IA does not assess the economic impacts stemming from the extension of the ADR Directive to third-country traders in detail. It merely argues that the impact would depend on traders' willingness to engage in ADR disputes, which it considers to be low (IA, p. 40), without however further substantiating this claim.

The IA expects the initiative to have positive **social impacts**. This concerns the qualification of ADR professionals (all POs, albeit to varying degrees), and the inclusion of third-country traders within the scope of the ADR Directive (POs B, C and D), which, according to the IA 'would level the playing field for EU and non-EU businesses'. Moreover, introducing a 'duty of reply' for traders towards ADR entities (preferred PO C) would have a positive effect on consumers, as it would reduce their stress.

The initiative's **environmental impacts** are deemed to be marginal under POs A, B and D. They are considered slightly positive under PO C, as this PO would allow consumers to seek redress against misleading green claims ('greenwashing') under the proposed scope extension that would include extra-contractual disputes (IA, p. 40).

With regard to **fundamental rights**, the IA stresses that widening the directive's material and geographical scope (POs C and D) would reinforce consumers' access to private redress in line with Article 47 of the Charter on Fundamental Rights (CFREU). The proposed self-certification measures for PODR systems (under POs C and D) would enhance consumer protection (Article 38 CFREU) without hampering these platforms' freedom to conduct business (Article 16 CFREU). Conversely, the IA cautions that 'naming and shaming' of traders who refuse to engage in ADR (PO B) could 'potentially encroach on their freedom to conduct business and raise serious issues regarding the presumption of innocence' under Articles 16 and 47 CFREU, respectively (IA, p. 36).

The IA does not assess the **impact of digitalisation** in dispute handling, including the use of artificial intelligence (AI), even if stakeholders suggested that digitalisation could 'foster a more efficient complaint-handling framework in cross-border scenarios and enhance cost-effectiveness' (IA, p. 55).

Following a comparison of policy options, **PO C emerges as the preferred option**. The IA underscores its observance of the subsidiarity and proportionality principles, arguing, inter alia, that this option would maintain the current ADR Directive's minimum harmonisation approach and not require Member States to make participation in ADR mandatory for traders (IA, pp. 46-47).

### SMEs / Competitiveness

The IA does not break down traders by size of business. In this respect, the IA notes that current statistical data on ADR disputes do not distinguish between small and medium-sized enterprises (SMEs) and large businesses (IA, pp. 42, 82 and 87). Although traders include **SMEs** – the IA even states that 'the wide majority of businesses' concerned are SMEs (IA, p. 46) – the IA does not specifically assess the initiative's impact on SMEs; nor was an SME test carried out. Nonetheless, SMEs are believed to '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' (IA, p. 109). The IA further suggests that the preferred policy option would positively impact on SMEs' competitiveness,



pointing in particular at 'significant cost savings', which SMEs could use to boost 'the attractiveness of their prices' and fostering innovation (IA, pp. 46-47).

With regard to international competitiveness, the brief **competitiveness check** (IA, Annex 5) notes that the extension of the scope to third-country traders 'would level the playing field in favour of EU traders, correcting a market failure' (IA, p. 109). This somewhat contrasts the IA's low expectations regarding third-country traders' willingness to engage in ADR disputes (see IA, p. 40).

### Simplification and other regulatory implications

The proposals to revise the ADR framework and to repeal the ODR Regulation were listed in Annex II of the 2024 CWP, as two of the initiatives that aim to **rationalise reporting requirements** in existing legislation, thus delivering on the 25 % burden-reduction target to which the Commission committed in its 2023 [communication](#) on the EU's long-term competitiveness. However, the IA is far less explicit on cutting red tape than the proposal.

The proposed repeal of the ODR Regulation would require amending all legal acts containing a reference to the ODR platform. This concerns the Package Travel Directive; the Enforcement and Modernisation Directive; and the Representative Actions Directive.

With regard to the '**one in, one out**' (OIOO) approach (BRG, tool #59), the IA takes into account:

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

The IA considers these costs 'highly compensated' by €634 million of annual cost savings for businesses. These would stem from simplification of information and reporting obligations, generating savings of ongoing adjustment costs for businesses in the range of €264 million per year (IA, p. 47), and €370 million per year because of 'improved efficiency' resulting from the replacement of the ODR platform (IA, p. 47).

### Monitoring and evaluation

The IA puts forward four **monitoring indicators** for measuring the amended directive's success. These include the number of ADR disputes in the EU and consumers and traders' awareness of ADR (IA, pp. 47-48). The IA does not elaborate on **review clauses**, as the ADR Directive's monitoring provisions are not concerned by the proposed targeted amendments. Thus, the review clause in Article 26 of the current directive would remain unchanged, requiring the Commission to submit every four years a report on the performance of the directive.

### Stakeholder consultation

In line with the BRG, the Commission consulted stakeholders comprehensively, using a mix of open public and targeted consultations. The consultations covered both the revision of the ADR Directive and the potential repeal of the ODR Regulation. In line with the BRG, Annex 2 of the IA ('synopsis report') gives a detailed account of all consultation activities.

The IA identified the following stakeholder groups as particularly relevant:

- national ADR authorities in the Member States and ADR entities;
- traders (not broken down by size of business) and trade associations;
- citizens, consumer organisations and European Consumer Centres (ECCs);
- experts from the industry and academia.

The Commission ran a **call for evidence** for the combined [impact assessment and evaluation](#) and a questionnaire-based **open public consultation** simultaneously, between 28 September and

21 December 2022, thus complying with the 12-week requirement under the BRG (tool #51). The call for evidence yielded 20 valid responses. In comparison, 111 responses were received for the open public consultation, with most of them coming from EU citizens, business associations, public authorities and consumer organisations. The IA summarises the main points stakeholders raised (IA, p. 60), without however breaking them down by stakeholder categories.

With regard to **targeted consultations**, the Commission organised an ADR assembly on 28-29 September 2021 in presence of the competent Commissioner. This event brought together certified ADR entities, national competent authorities, ECCs and academics. In several workshops, participants examined questions of i) costs, benefits and challenges of various ADR models; ii) the ADR Directive's suitability for the digital markets; and iii) sector-specific issues relating to transport, energy, telecommunication and financial services.

Two further ADR workshops followed in 2022:

- A 'consumer summit' focusing on the use of digital tools in the ADR process concluded that quality requirements for automated tools (such as chatbots, algorithmic complaint analysis, legal tech) would need to be incorporated into the existing ADR framework;
- A cross-border ADR roundtable with 60 participants, representing all relevant stakeholder groups, recommended a bundle of measures, many of which appear to be reflected in the preferred option.

In addition, the Commission held several meetings with national competent authorities, ECCs and sector-specific ADR entities. Overall, the level of stakeholder involvement appears high, and the consultation outcomes seem to be adequately reflected throughout the IA.

## Supporting data and analytical methods used

Besides the stakeholder consultation, the IA draws on a wide range of seemingly relevant sources, including the implementation reports the Commission published in [2019](#) and [2023](#) in accordance with Article 26 of the ADR Directive and Article 21(2) of the ODR Regulation. The revision was also informed by an [ex-post evaluation](#) of the current ADR/ODR framework,<sup>6</sup> in line with the 'evaluate first' principle. Although the evaluation appears to be fully fledged, it was carried out in parallel with the impact assessment ('back to back', BRG, tool #51) rather than successively.<sup>7</sup> Nonetheless, it seems that the evaluation findings are well reflected in the impact assessment, feeding, in particular into the problem definition.

A number of externally contracted studies provided further evidence; for instance, an information gathering [study](#) on ADR and ODR that includes a separately published [annex](#) with case studies covering travel, e-commerce, financial services and the use of AI in the ODR; a [behavioural study](#) on the disclosure of ADR information to consumers by traders and ADR entities; and a [legal study](#) examining the ADR framework's future needs based on five jurisdictions.<sup>8</sup> Moreover, the Commission used recent data gathered in periodic surveys and scoreboards (e.g. consumer conditions survey and scoreboard; market monitoring survey; justice scoreboard).

Annex 4 (Analytical methods) provides user-friendly tables summarising the different policy options' impacts broken down by stakeholder groups; however, this annex is largely silent on the analytical methods used to calculate the various impacts.

## Follow-up to the opinion of the Commission Regulatory Scrutiny Board

Following its examination of an earlier draft of the IA, the Regulatory Scrutiny Board (RSB) issued a positive [opinion](#) on 28 April 2023, which, however, highlighted a few major shortcomings.

- The choice of measures constituting the policy option packages would require further explanation, while the comparison of options lacked detail and clarity in terms of methodology and applied criteria.

- The IA should explain how the enforcement of the directive would be executed with respect to the third-country traders under the proposed scope extension.
- The impact analysis would need to be strengthened, e.g. the IA should further clarify all the assumptions and acknowledge the limitations of the analysis. Furthermore, the classification of costs related to the OIOO approach should be brought in line with the methodology presented in the BRG.

The IA's explanation of how the RSB's comments have been followed-up lacks detail (IA, p. 49-50). It appears from the final IA that not all issues raised by the Board have been fully addressed, as noted in this briefing. For instance, the description of the measures forming the different policy options would have benefited from more detail and contextualisation.

## Coherence between the Commission's legislative proposal and the IA

The proposal seems largely coherent with the preferred policy option C. Notwithstanding, some **differences** are apparent. The proposal does not explain why it deviated from the IA.

- One of the IA's (rather vaguely formulated) **specific objectives** is to increase consumers and traders' engagement in ADR. The corresponding objective in the proposal is far more specific and tangible, namely to 'simplify ADR procedures to the benefit of all actors; including reducing reporting obligations of ADR entities and information obligations of traders whilst encouraging traders to increase their engagement in ADR claims through the introduction of a duty to reply'.
- **Measures under the preferred PO C** relating to online platforms offering private ADR procedures ('PODR') and EU-level trade associations providing cross-border dispute resolution procedures as part of their services are missing from the legislative proposal. Instead, they are part of the (non-binding) Commission [recommendation](#) complementing the proposal.
- Article 5(2)(c) of the proposed directive ensures that the dispute parties have the right to have the outcome of an **automated procedure reviewed by a natural person**. While this measure is not assessed in the IA (which rather strives to improve the qualification of ADR case-handlers for cross-border disputes), it however responds to a request the European Parliament expressed in its [resolution](#) of 12 February 2020 on automated decision-making processes.<sup>9</sup>
- While the legislative proposal and its explanatory memorandum place emphasis on **rationalising reporting requirements**, not all proposed cuts in red tape are considered in the IA. This concerns in particular ADR entities' reporting obligations. According to the proposal, ADR entities in future would need to report biennially (instead of annually) to the competent ADR authorities, and would no longer need to report on their cooperation within ADR networks and their training activities. On this point, the IA merely notes that stakeholders 'emphasised the importance of reducing reporting obligations for ADR entities' (IA, p. 42).



The impact assessment (IA) underpinning the revision of the alternative dispute resolution (ADR) framework presents a robust intervention logic. It puts forward four policy options (including a non-regulatory option) with varying degrees of ambition; however, the description of the different policy options would have benefited from more depth and detail. The IA assesses the policy options in terms of their economic, social and environmental impacts and their effects on fundamental rights. While large parts of the analysis are mainly qualitative, the section on economic impacts is also supported by quantitative data and estimations. Although the IA acknowledges that most businesses concerned are SMEs, the impact on SMEs is not further assessed. Similarly, more reflection on the impact of extending the directive's scope to third-country traders would have been warranted. The IA's evidence base appears solid: in addition to a comprehensive stakeholder consultation, it drew on an ex-post evaluation (conducted 'back to back' with the IA), Commission reports on the application of the current ADR/ODR framework, and several highly relevant and up-to-date studies. The legislative proposal appears to follow broadly the IA's preferred option, despite some clear differences.

## ENDNOTES

- <sup>1</sup> Notably the 2023 [evaluation](#) and the 2019 and 2023 implementation reports. See also S. Tenhunen, [EU framework on alternative dispute resolution for consumers](#), EPRS, European Parliament, February 2024.
- <sup>2</sup> Although the IA's scope is limited to the revision of the ADR Directive, it nonetheless includes an analysis of the performance and use of the ODR platform in a dedicated Annex 6 (IA, pp. 110-117).
- <sup>3</sup> Article 26 of the ADR Directive mandates implementation reports every four years. The first [report](#) dates from 2019.
- <sup>4</sup> For details on the reduction of reporting requirements, see N. Hahnkamper-Vandenbulcke and I. Anglmayer, [2024 Commission work programme](#), EPRS, European Parliament, November 2023.
- <sup>5</sup> As defined in Article 2 of the ADR Directive.
- <sup>6</sup> In line with the BRG, the evaluation was published as an annex to the present IA.
- <sup>7</sup> In its [resolution](#) of 7 July 2023, Parliament expressed concerns about the increasing number of back-to-back revisions (point 52). It appears that 22 % of all evaluations the Commission carried out between July 2020 and October 2023 were done back to back with the corresponding impact assessment (see I. Anglmayer, [Evaluation in the European Commission: Rolling check-list and state of play](#), 5th ed., EPRS, European Parliament, November 2023, p. 35).
- <sup>8</sup> The five jurisdictions are Belgium, Germany, France, Italy and the Netherlands.
- <sup>9</sup> See point 5: [The European Parliament] 'calls on the Commission to ensure that any upcoming review of Directive 2013/11/EU on alternative dispute resolution for consumer disputes and Regulation (EU) No 524/2013 on online dispute resolution for consumer disputes takes into account the use of automated decision-making and ensures that humans remain in control'.

This briefing, prepared for the IMCO committee, analyses whether the principal criteria laid down in the Commission's own Better Regulation Guidelines, as well as additional factors identified by the Parliament in its Impact Assessment Handbook, appear to be met by the impact assessment. It does not attempt to deal with the substance of the proposal.

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