

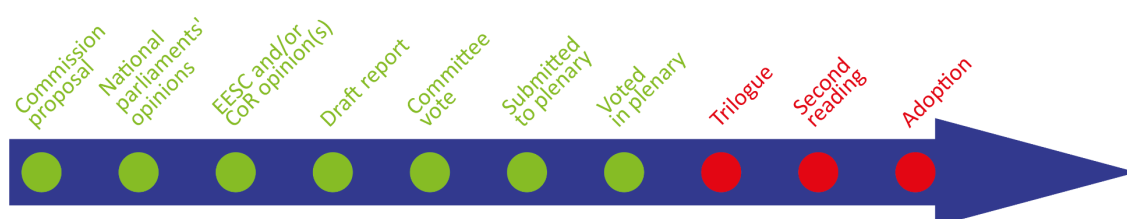
Alternative dispute resolution

OVERVIEW

Alternative dispute resolution (ADR) is defined as a process allowing complaints to be settled out of court with the assistance of an impartial dispute resolution body. On 17 October 2023, the European Commission adopted proposals for a directive amending several directives pertaining to consumer rights and ADR, in which the notion of complaint relates to situations where a relation between a consumer and a trader gives rise to a complaint from the consumer. Through ADR, consumers are able to settle a complaint against a trader for breach of contract, outside court procedures, assisted by impartial, neutral dispute mediation, arbitration or conciliation. Since 2013, the share of e-commerce in the EU economy has increased significantly, up from 2 % to 4 % of EU GDP, increasing the relevance of ADR for consumers. Each year, circa 300 000 eligible disputes between consumers and traders are examined by ADR entities, with resolution rates between 17 % and 100 % across the Member States. The Commission proposal pursues three objectives, to: adapt the ADR legislative framework to digital markets; facilitate the use of ADR in cross-border disputes; and simplify ADR procedures.

In the European Parliament, the file was referred to the Committee on Internal Market and Consumer Protection. The committee adopted its report unanimously on 22 February 2024. On 13 March 2024, Parliament adopted the report as its first reading position with 605 votes in favour, 7 votes against and 13 abstentions.

Proposal for a directive amending Directive 2013/11/EU on alternative dispute resolution, Directive (EU) 2015/2302 on package travel and linked travel arrangements, Directive (EU) 2019/2161 as regards the better enforcement and modernisation of Union consumer protection rules, and (EU) 2020/1828 on representative actions for the protection of the collective interests of consumers		
Committee responsible:	Internal Market and Consumer Protection (IMCO)	COM(2023) 649 17.10.2023
Rapporteur:	Laura Ballarín Cereza (S&D, Spain)	2023/0376 (COD)
Shadow rapporteurs	Antonius Manders (EPP, Netherlands) Dita Charanzová (Renew, Czechia) Katrín Langensiepen (Greens, Germany) Adam Bielan (ECR, Poland)	Ordinary legislative procedure (COD) (Parliament and Council on equal footing – formerly 'co-decision')
Next steps expected:	Trilogue negotiations	



Introduction

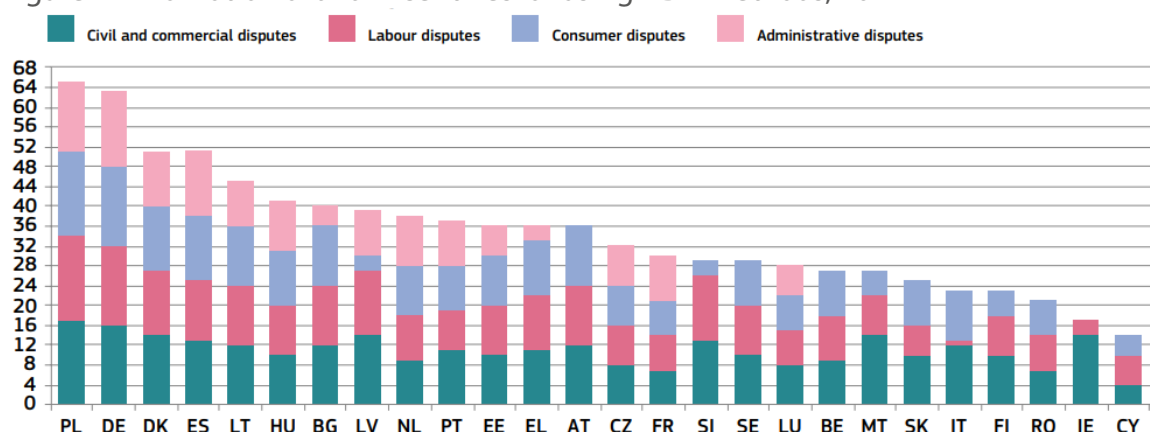
According to the 2021 edition of the consumer conditions [survey](#) published by the Commission, only 5 % of the EU consumers – roughly 2.250 million persons – who encountered a problem in buying a product or service, and took subsequent action, reported it to an alternative dispute resolution (ADR) body. A procedure to settle complaints for breach of contract, out of court through the assistance of an impartial, neutral dispute resolution body, providing mediation, arbitration or conciliation, for example. ADR therefore complements, or provides an alternative to litigation, on the basis of consumer and/or contract law. The survey also stresses that the recourse to such bodies ranges from 0 % to 12 % across the Member States. Whilst a lack of awareness might partially explain this limited use of ADR, with only 43 % of EU-established retailers aware of the scheme, according to the Commission impact [assessment](#), other factors are also at play. This is notably the case with the uptake of private online dispute resolution operated by online marketplaces, which 12 % of EU consumers experiencing a problem with a trader have used, according to a 2020 [report](#). The development of online platforms challenges the directive's effectiveness, especially regarding traders established outside the EU.

On 17 October 2023, the Commission adopted a proposal for a directive amending Directive 2013/11/EU on alternative dispute resolution (ADR) for consumer disputes, as well as Directive 2015/2302/EU on package travels, Directive 2019/2161/EU on better enforcement and modernisation of Union consumer protection rules, and on Directive 2020/1828 EU on representative actions for the protection of the collective interests of consumers.

Existing situation

The current Directive 2013/11/EU takes a minimum harmonisation approach to define the requirements to qualify an entity as an ADR body, as well as to the procedural rules that apply to the 'out of court' resolution of disputes stemming from sales or service contracts between a trader and a consumer where both are established in the EU. These requirements entail an obligation of expertise, independence and impartiality on the natural persons in charge of the cases, as well as specific result obligations that should ensure the procedural rules and ADR organisations are transparent, effective and fair.

Figure 1 – Promotion of and incentives for using ADR methods, 2022*



(*) Maximum possible: 68 points. Aggregated indicators based on the following indicators: 1) website providing information on ADR; 2) media publicity campaigns; 3) brochure the general public; 4) provision by the court of specific information sessions on ADR upon request; 5) court ADR/mediation coordinator; 6) publication of evaluations on the ADR; 7) publication of statistics on the use of ADR; 8) partial or full coverage by legal aid of costs ADR incurred; 9) full or partial refund of court fees, including stamp duties, if successful; 10) no requirement for a lawyer for ADR procedures; 11) judge can act as a mediator; 12) agreement reached by the parties becomes enforceable by the court; 13) ability to initiate proceedings/file a claim and submit documentary evidence online; 14) parties can be informed of the initiation and different steps of procedures electronically; 15) possibility of online payment of applicable fees; 16) use of technology (artificial intelligence applications, chat bots) to facilitate the submission and resolution of disputes; or other means. For each of these 17 indicators, one point was awarded for each area of law. **IE**: administrative cases fall into the category of civil and commercial cases. **EL**: ADR in public procurement procedures before administrative courts of appeal. **ES**: ADR is mandatory in labour law cases. **PT**: for civil/commercial disputes, court fees are refunded in the case of justices for peace. **SK**: the Slovak legal order does not support the use of ADR for administrative purposes. **FI**: consumer and labour disputes are also considered to be cases. **SE**: judges have procedural discretion on ADR. Seeking an amicable dispute settlement is a mandatory task for the judge unless it is inappropriate due to the nature of the

Source: European Commission, [2023 EU Justice Scoreboard](#) (2022 data collected in cooperation with the group of contact persons on national justice systems).

The directive also regulates the extent of the binding effects of ADR. The outcome of ADR is not binding when an agreement between the trader and the consumer has been concluded before the materialisation of the dispute. Also, the binding effect of the dispute requires the previous information and specific agreement by both parties. Each Member State is responsible for designating a competent authority to check the compliance of the entities requesting recognition as an ADR.

The proposal follows up on [Regulation \(EU\) 524/2013](#) of 21 May 2013 on online dispute resolution for consumer disputes, which established the online dispute resolution digital platform, developed and operated by the Commission. The platform provides a single point of entry for consumers and traders seeking out-of-court dispute resolution. However, digital marketplaces' development of online complaint solutions has seen use of the platform fall to around 200 complaints per year.

Parliament's starting position

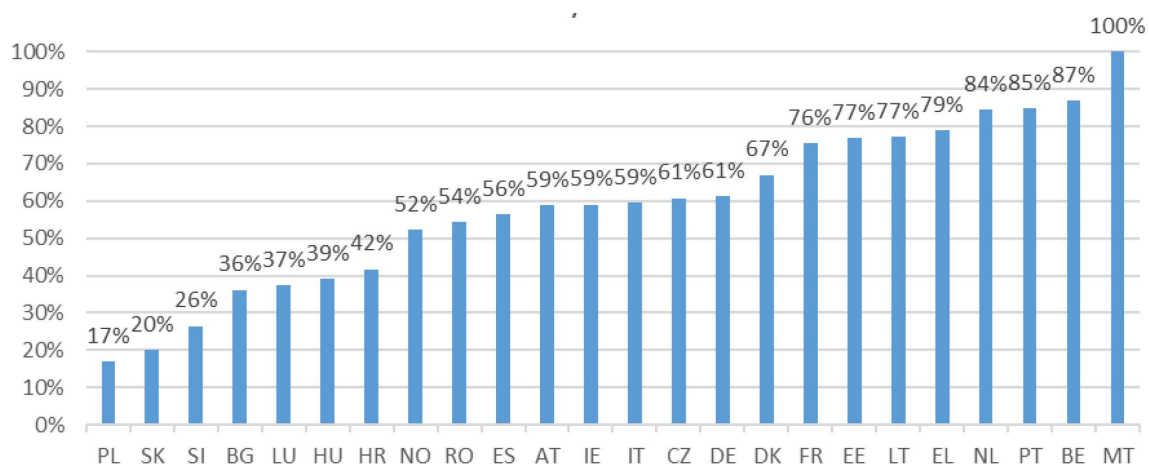
With its [resolution](#) of 12 February 2020 on automated decision-making processes: ensuring consumer protection, and free movement of goods and services, the Parliament noted that automated decision-making systems are being used in alternative dispute resolution mechanisms on many digital platforms to resolve disputes between consumers and traders. In this context, it called 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, should take the use of automated decision-making into account and should ensure that a human remains in control of the overall assessment of the cases.

In its [resolution](#) of 18 January 2023 on the 30th anniversary of the single market: celebrating achievements and looking towards future developments, the Parliament calls on the Commission to explore new digital opportunities and trends, to ensure the EU's strong consumer protection continues.

Preparation of the proposal

The Commission consulted stakeholders, holding a public [consultation](#) between September and December 2022, with 111 respondents participating from 23 Member States. The vast majority of the respondents indicated that the move towards online trading means consumers should be able to resolve disputes through ADR with traders established outside the EU. The majority would also

Figure 2 – Average resolution rate of disputes referred to ADR entities (2018-2021)*



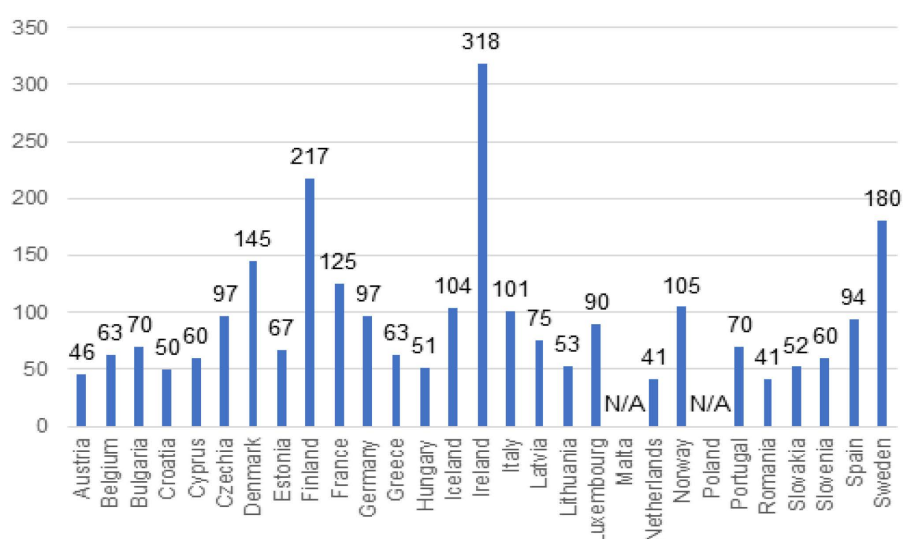
Source: Data collection study: Data for 3 Member States only covered some of the years: BE (based on data 2018-2021), FR (based on data 2019 and 2020), and RO (based on data 2018-2020), [Report on the application of Directive 2013/11/EU on alternative dispute resolution for consumer disputes](#), European Commission, 2023.

favour resolving disputes related to pre-contractual information through ADR. More than half of the respondents also flagged their support for collective ADR, on the condition that case handling would be easier. Regarding the private online dispute resolution schemes (PODR), a significant share of respondents declared that they would use them only if they could appeal their decision.

In 2023, the Commission published its second [report](#) on the implementation of Directive 2013/11/EU, pursuant with Article 26 of the directive (the first report was published in 2019). The report generally confirms that Member States have successfully established the framework required for ADR entities to operate. It is estimated that among the circa 430 such entities notified to the Commission by the national competent authorities, 64 % deliver non-binding outcomes, a further 20 % deliver outcomes that are binding on both parties, whilst the remainder are binding only upon traders. Among the 23 Member States which provided data, circa 300 000 eligible disputes are presented annually, with an over 50 % average resolution rate.

However, the report found a limited level of awareness among both consumers and traders: for instance, the 2019 consumer conditions scoreboard found that 43 % of the retailers interrogated were unaware of ADR. Only six Member States transposed the directive by creating an obligation for traders to participate in ADR across economic sectors, whilst seven other Member States created such an obligation only for specific economic sectors. Eleven Member States made participation entirely voluntary. The Commission's impact assessment considers that only 60 % of traders accept participation in ADR in the EU.

Figure 3 – Average duration of an ADR dispute in the European Economic Area (in days)



Source: Commission staff working document, [Impact assessment report on the proposal for a directive amending Directive 2013/11/EU](#), European Commission, 2023.

The impact assessment report published with the proposed directive provides additional elements to explain the shortcomings of the current legislation. On the one hand, the current directive's scope does not correspond to new patterns of consumption. The increase in e-commerce, including cross-border transactions (which account for more than half of traders' refusals to engage in an ADR process), is accompanied by the development of private online dispute resolution solutions (PODR), provided by digital platforms not necessarily established in the EU, and thus not subject to the directive. The impact assessment mentions that in 2020, at least 12 % of EU consumers who experienced a problem with a trader sought to resolve it directly through a PODR. On the other hand, the development of online platforms extends the nature of disputes between consumers and traders beyond their contractual relationship, to additional circumstances such as unfair pre-contractual practices.

With its 2023 [communication](#) on 'long term competitiveness of the EU: looking beyond 2030', the Commission also announced its intention to help incentivise regulatory schemes, and to contribute to controlling compliance costs. In this context, the Commission's 2023 [communication](#) on a small and medium-sized enterprise (SME) relief package identified the rationalisation of ADR as one of its targets for reducing reporting requirements.

The changes the proposal would bring

ADR Directive

The **extended scope of application** is the most important change in the proposal. It has two dimensions: material and geographical. Regarding the material scope, Article 2 on the directive's scope of the would be modified, in particular to include a new paragraph 2(1)b that would make consumer rights applicable to non-contractual and pre-contractual situations (including the supply of digital content and service contracts), eligible for alternative dispute resolution (ADR). Whilst this paragraph includes an indicative list of seven such situations (for instance, the right to switch providers), it allows Member States to extend ADR further to other categories of dispute, thereby facilitating the uptake of ADR across the economy.

Regarding the geographical scope, whilst Article 2 on the directive's scope would be modified to delete the reference to the geographical establishment of traders concerned by the directive, the proposed changes to Article 4 on definition include a new point f) under Article 4(1), which defines a 'cross-border dispute' as a dispute between a consumer resident in a Member State, and a trader established in another Member State, or established outside the Union.

The proposed changes also aim at **strengthening the remit of ADR entities** established in the Member States. Under Article 5 on access to ADR and ADR procedures, the proposed change to Article 5(2)c) would authorise ADR entities to bundle similar cases into one procedure, on the condition that consumers have no objection. The new Article 5(8) would create an obligation on Member States to make sure that any trader established on their territories responds, within a maximum of 20 working days, to any ADR established in the EU as to whether it would agree to participate in an ADR procedure. Recital 13 also authorises Member States to introduce national legislation that would make traders' participation in ADR procedures mandatory in specific sectors, beyond the enforcement of analogous obligations in Union sector-specific legislation.

To encourage the uptake of ADR procedures, the proposal also includes a set of **consumer incentives**. The proposed Article 5(2) mentioned above also provides for the traceability of the complaints lodged by consumers, as well as the requisite supporting documents. The same article would ensure such procedures are adapted to vulnerable consumers, by spelling-out a generic obligation to use 'easily accessible and inclusive tools', as well as by allowing a non-digital procedure upon request. The new Article 5(2)c) would then recognise the right of the parties (traders and consumers) to have the ADR procedure reviewed by a natural person, when the procedure was took place through automated means.

The **facilitation of cross-border ADR** procedures is another significant change included in the proposal. With the newly proposed Article 14 on assistance for consumers, the parties' information rights would be improved. Article 14(1) would ensure consumers and traders' right to assistance to access the competent ADR in the case of a cross-border dispute. Article 14(3) lays down the minimum requirements for these information rights: they should cover explanation of the rules applied by the relevant ADR entities. Article 14(2) requires Member States to designate one ADR contact point in charge of the obligations set in Article 14. It also prescribes that Member States confer the responsibility for contact point operations to the European Consumers Centres Network, or alternatively to consumer organisations, or any other entity in charge of consumer protection.

Package Travel Directive (EU) 2015/2302

Article 7(2)g) of Directive (EU) 2015/2302 on package travel and linked travel arrangements would be amended to ensure information on ADR is available in package holiday arrangements.

Advisory committees

The European Economic and Social Committee (EESC) adopted an [opinion](#) on the proposed directive, during its plenary session in February 2024. W. Robyns de Schneidauer (Employers GR I/Belgium) was appointed rapporteur. The EESC supports the proposal. It suggests facilitating increased trader participation, including SMEs. The EESC stresses the policy relevance of the feedback from ADR instances to national authorities and therefore invites the Commission to include such feedback in its evaluation of sectoral legislation, as appropriate.

National parliaments

The deadline for the communication of a reasoned opinion on the grounds of subsidiarity was set for 26 January 2024. On 4 December 2023, the German Bundesrat Committees on the environment, nature protection and nuclear safety, and on the economy, made a [recommendation](#) to the Bundesrat indicating the need to improve visibility of and access to ADR, for example through the creation of a specific 'button'. It also calls upon the EU co-legislators to ensure the consistency of the proposed directive with the provisions of Article 21 on out-of-court dispute settlement in [Regulation \(EU\) 2022/2065](#) on a single market for digital services (the Digital Services Act).

Stakeholder views

The business view can be seen in a 2022 [paper](#) on the review of the ADR Directive from Ecommerce Europe. It points out the fragmentation of ADR into more than 400 entities across Member States, creating complexity for both traders and consumers. ADR entities also face significant legal issues in determining the law applicable to the cases handled. With a view to the revision of the directive, Ecommerce Europe supports an extended scope for the directive to non-contractual disputes, as well as the inclusion of traders not established in the EU. It also invites exploration of the extension of the directive to consumers and to consumer contracts concluded via an intermediary. Finally, it also invites the EU institutions to ensure the alignment of EU ADR legislation with the Digital Services Act – notably Article 21 on out-of-court settlements.

Representing consumers, the European Bureau of Consumers organisations (BEUC) adopted a position [paper](#) in 2022, on the need to update EU ADR. It also hints at the fragmentation of the ADR landscape in the EU, notably underlining the discrepancies in quality requirements defined by the 27 Member States, regarding for instance the professional and independence requirements on professionals active in ADR, or the solutions provided for including vulnerable consumers. As for the architecture of ADR entities, BEUC notes that the choice of a limited number of ADR bodies, for instance through ombudsman-like ADR sectoral schemes, together with a residual entity, seems to facilitate the overall coverage of the relevant markets. The BEUC also calls for reinforced oversight of ADR entities. Regarding ADR's effectiveness, it supports the need to consider mandatory trader participation, whilst providing them with incentives to comply with ADR entities' decisions, including through the establishment of lists of non-compliant traders, which are already in use by several national authorities.

In 2022, the network of European Consumers Centres published an [overview](#) of ADR in Europe. Whilst indicating that the limited trader adherence to ADR, and to ADR entities' decisions, is one of the most pressing shortcomings to improve, it also flags the complexities in the resolution of cross-border disputes as another point to address, not least to promote the use of several languages to increase ADR's attractiveness (for instance, Belgium, Germany and Latvia have authorised the use of English in processing disputes).

Legislative process

In the Parliament, the file was referred to the Committee on Internal Market and Consumer Protection (IMCO), which adopted its [report](#) unanimously on 22 February 2024, with 40 votes in favour. Associated for opinion, the Committee on Transport and Tourism adopted its opinion on 28 February 2024. The IMCO report seeks to strengthen the Commission's proposal by increasing traders' participation in ADR procedures, and by improving consumer awareness.

To increase trader participation, the report includes an amendment to Article 1 that would make participation of air carriers falling under the scope of [Regulation \(EC\) 261/2004](#) mandatory in ADR procedures. The report also amends Article 2 on the directive's scope. An amendment to Article 2(1) point a) would include the pre-contractual obligations mentioned in Article 2(1) point b) of the Commission proposal. The report then specifies the scope of non-contractual situations under Article 2(1) point b), including, for instance, non-discrimination on the basis of nationality or place of residence, as well as the right to switch providers. In addition to this extended scope, the report also contains incentives to increase trader participation in ADR procedures. For example, an amendment to Article 5(1) would invite Member States to facilitate access to ADR procedures for the self-employed or micro-enterprises. Trader participation would also be facilitated by enhanced visibility rules for the non-compliant traders. An amendment to Article 19(3) point d) of the directive would require ADR entities to include information on traders who systematically and unduly refuse to comply with the outcomes of ADR procedures, with the information to be communicated to the relevant national authorities.

To improve consumer awareness, the IMCO report proposes a set of complementary approaches. The impartiality and quality of procedures carried out by ADR entities should be improved. An amendment to Article 5(2) point c) specifies that, where a complaint would be treated using automated means, the parties could demand a natural, independent and impartial person reviews the procedure. Similarly, an amendment to Article 6(1) point a) would require ADR entities to employ natural persons with a general understanding of private law in cross-border cases. To facilitate consumer participation in cross-border procedures, an amendment to Article 14 would require Member States to ensure the use of the official languages of consumer's state of residence. The report also seeks to improve follow-up to ADR procedures. The processing time for requests should be reduced to 15 working days through an amendment to Article 5(8), which nevertheless leaves the initial deadline of 20 working days for complex disputes or in exceptional circumstances. The committee also seeks to improve the explanation of the decisions taken by traders. An amendment to Article 11 would create an obligation on traders who do not comply with the outcome of an ADR procedure to provide a written explanation to the parties, regardless of whether the outcome of the procedure is binding. An amendment to Article 8 would provide for any nominal fees consumers are requested to pay to be reimbursable by national authorities following the resolution of the case.

During its plenary session on [13 March 2024](#), Parliament adopted the report as its first-reading position by 605 votes in favour and 7 against, with 13 abstentions.

In the Council, the file has been referred to the working party on consumer protection and information.

EUROPEAN PARLIAMENT SUPPORTING ANALYSIS

Evroux C., [General Product Safety Regulation](#), EPRS, February 2023.

Madiaga T., [Digital services act](#), EPRS, November 2022.

[E-commerce rules, fit for the digital age](#), Policy Department for Economic, Scientific and Quality of Life Policies, May 2020.

Šajn N., [Strengthening market surveillance of harmonised industrial products](#), EPRS, July 2019.

OTHER SOURCES

[Amending ADR Directive and certain other consumer protection directives](#), Legislative Observatory (OEIL), European Parliament.

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