

EU framework on alternative dispute resolution for consumers

This briefing is one in a series of 'implementation appraisals', produced by the European Parliamentary Research Service (EPRS), on the operation of existing EU legislation in practice. Each briefing focuses on a specific EU law, which is to be amended or reviewed, as envisaged in the European Commission's annual work programme. 'Implementation appraisals' aim to provide a succinct overview of publicly available material on the implementation, application and effectiveness to date of an EU law, drawing on input from EU institutions and bodies, as well as external organisations. They are provided by the EPRS Ex-Post Evaluation Unit, to assist parliamentary committees in their consideration of European Commission proposals.

SUMMARY

Directive (2013/11/EU) on alternative dispute resolution for consumer disputes (the 'ADR Directive') provides an out-of-court solution for consumers to resolve disputes on goods and services purchased from traders established in the single market. Together with Regulation (EU) No 524/2013 on online dispute resolution for consumer disputes (the 'ODR Regulation'), the ADR Directive forms a horizontal EU-level framework for alternative dispute resolution. The significant increase of online sales, in particular during the COVID-19 pandemic, as well as contractual challenges exposed by the energy crisis, have highlighted the continued importance of an effective, low-cost and fair way to resolve disputes between consumers and traders. Typically, these disputes concern return of money, reparation of faulty products, or termination of a contract based on unfair terms.

Although the ADR mechanisms are deemed a clear improvement for consumers, the digitalisation of the consumer market, the complexity of the procedures and lack of awareness challenge the existing ADR architecture adopted in 2013. Despite successive updates, the ODR platform has reportedly not achieved its objectives. On 17 October 2023, the European Commission therefore proposed to introduce targeted amendments to the ADR Directive and to repeal the ODR Regulation. It also put forward a new recommendation setting quality requirements for online marketplaces and EU trade associations providing dispute resolution systems. In addition to aiming for a modernised ADR framework, these proposals for revision contribute to the Better Regulation simplification and burden reduction targets.

During the ninth legislature, the European Parliament has addressed ADR in the context of policies having consumer protection – including access to redress – at their core. These include, among other policies, automated decision-making. In addition, Parliament has dealt with several petitions from citizens relating to the implementation and application of the ADR mechanisms in practice. Preliminary rulings of the Court of Justice of the European Union (CJEU) have clarified the interpretation of certain provisions of the ADR Directive and thus facilitated legal certainty.



Existing legislation and its application

[Directive](#) 2013/11/EU on alternative dispute resolution for consumer disputes (the 'ADR Directive') and [Regulation](#) (EU) No 524/2013 on online dispute resolution for consumer disputes (the 'ODR Regulation') are cornerstones of the legal framework to ensure efficient access to consumer redress in the EU. Commission [implementing regulation](#) (EU) 2015/1051 complements the ODR Regulation with modalities for the exercise of the functions, an electronic complaint form and cooperation between contact points of the platform.

EU framework on alternative and online dispute resolution

Adopted in 2013 to maintain a **high level of consumer rights and a level playing field for businesses** across the single market, the ADR Directive built on two previous Commission recommendations.¹ The Commission's [2011 impact assessment](#) called for improved access to redress for consumers through alternative dispute resolution schemes and highlighted that the divergence in national policies on ADR schemes did not match the needs of either consumers or businesses of that time, especially in cross-border and online disputes. The 2011 impact assessment listed three general objectives for the ADR Directive: i) improve the retail internal market, including digital aspects; ii) ensure a high level of consumer protection; and iii) offer an effective dispute resolution for consumers and traders.

Through the current alternative dispute resolution framework, consumers may refer their disputes with a trader to a simplified, fast and low-cost out-of-court proceeding. It ensures that consumers within the EU have access to **high-quality ADR processes** to resolve their contractual disputes arising from the sale of goods or services by traders established in the single market. Member States were to transpose the ADR Directive into national law by 9 July 2015; however, **full transposition** was confirmed only by 2018, owing to delays by more than half of the Member States to communicate national implementing measures in the given timeframe.

The **minimum harmonisation approach** allowed Member States to go beyond requirements laid down in the directive and to adapt the EU-level harmonisation requirements to their pre-existing dispute handling systems. According to the ADR Directive, a quality ADR entity has to comply with the criteria on expertise, independence, impartiality, transparency, effectiveness, fairness, liberty and legality. Each Member State has set up one or several competent authorities responsible for accrediting and monitoring ADR entities' compliance with these quality requirements. The directive left it to the Member States to decide on the governance, funding model, voluntary or mandatory nature of participation and whether outcomes are binding or not. To increase consumer awareness and promote the use of ADR, the directive mandates traders to inform customers of the possibility to settle disputes out of court.

Table 1 – Features of ADR mechanisms in 27 EU Member States

| | General application | Specific application |
|-------------------------------|--|--|
| Trader participation required | 5 EU Member States | 5 EU Member States in specific sectors 4 EU Member States in specific circumstances |
| Binding outcome | | 17 EU Member States make ADR outcomes binding in certain circumstances or under certain conditions |
| Non-binding outcome | 8 EU Member States do not allow binding ADR outcomes | |

Data source: Evaluation report, [Annex 7 of SWD\(2023\) 335](#); 2023 application report, [COM\(2023\) 648](#).

A [list](#) of some 430 qualified ADR entities in the EEA area (EU, Iceland, Lichtenstein and Norway), available on the ODR platform, shows that the number of entities per Member State can vary significantly, ranging from three in Finland and Romania to as many as 82 in France.

Member States have opted for multiple solutions. The type of ADR entities and their competences vary: they may be public or private independent bodies or closely connected to traders and trade associations, and they may have sectoral or general competence in terms of market sectors. In some cases, ADR entities have competences at regional level or a residual system, meaning a centralised ADR scheme resolving a wide range of disputes or covering all disputes not covered by the other specialised ADR bodies. The procedures include consumer arbitration, mediation, and ombudsman schemes. Of all ADR entities, 20 % deliver outcomes binding on both parties, while 64 % deliver non-binding outcomes. Although most countries consider ADR proceedings voluntary for traders, sector-specific provisions might make trader participation mandatory.

The ODR Regulation [establishes](#) an **online dispute resolution platform** providing means for consumers to resolve a dispute relating to an online purchase by contacting a trader and proposing to start an ADR procedure. The Commission is responsible for developing and operating the multilingual ODR platform, its maintenance, funding, and data protection. In addition, the Commission organises meetings of national ODR contact points and takes care of regular reporting. Member States are responsible for establishing and maintaining their national ODR contact points, with national ODR advisers to support the parties in using the platform and provide general information of consumer rights and redress options.

According to the current system, ADR entities process the disputes arriving through the European ODR platform, provided the trader and consumer agreed to refer the dispute to an ADR entity. The ODR Regulation sets some obligations for traders, irrespective of whether they are obliged to use the ADR. Online marketplaces and traders offering goods and services should provide an easily accessible link to the ODR platform.

ADR/ODR application reports

In compliance with the **review clauses** in Article 26 of the ADR Directive and Article 21 of the ODR Regulation to assess implementation and needs for further adjustments regularly, the [first application report](#) was published in 2019. This was one year after full ADR coverage had been achieved and three and a half years after the launch of the ODR platform. The most recent [application report](#) was published in 2023, together with the amending proposal. Both application reports conclude that the ADR system has set the scene for accessible and quality consumer redress across the EU, extending to all retail sectors in the single market online as well as offline, regardless of whether the dispute is domestic or cross-border. Although the European ODR platform was identified in 2019 as providing a 'centralised and multilingual hub for resolving online disputes', it was also noted that it only partially reflects user needs.

The **challenges identified** in the conclusions of the 2019 report proved to be persistent, as they were mostly repeated in the 2023 report. Despite efforts, the ADR/ODR framework remained under-used; the national ADR landscape was perceived as hard to navigate, as systems vary significantly between Member States; and ADR awareness by both consumers and traders remained low, especially traders' uptake.

The 2023 report and the underpinning [information gathering study](#) show that the use of ADR has been relatively stable since 2018. However, the outbreak of the **COVID-19 pandemic** made the year 2020 a notable exception, mostly owing to [travel service](#) cancellations and subsequent [reimbursement requests](#) refused by airlines and service providers in the tourism sector. The **top four areas of ADR cases** between the years 2019 and 2021 were financial services, transport services, consumer goods, and energy and water. The highest numbers of complaints seem to be concentrated in the Member States with the largest consumer populations and trademarkets.

The 2023 report cited figures according to which only 30 % of EU retailers were willing and able to use ADR, while 43 % were unaware of its existence. However, according to the report, the vast majority of traders in EU Member States show willingness to engage if an ADR entity approaches them with a dispute. On average, only 10 % or less of traders refuse to participate if approached with a case by an ADR entity. When it comes to ADR entities' actual resolution rate, the data are deemed incomplete. Nevertheless, it is evident that the number of solved disputes varies significantly across Member States, with most of them reporting a resolution rate of 50 % or higher.

The 2023 application report also analyses the **practical implementation of the ODR Regulation**, noting the limited use of the platform. Digital marketplaces' online complaint handling systems have developed to be one of the main dispute resolution channels. Despite the high number of visits (up to 2 million to 3 million per year), the ODR platform enables on average only about 200 ADR outcomes EU wide per year, making it somewhat redundant as a dispute resolution platform. Nevertheless, it provides a space to share information on consumer rights and a tool for consumers to request online traders to solve a dispute using an ADR entity. The report concludes that the ODR system's level of performance was found not to justify the costs it generates – on the one hand for the Commission in terms of maintenance, and on the other for public administration and online businesses in compliance costs.

Road to revision

The proposals for a revision to **modernise the ADR framework and reduce unnecessary administrative burden** are linked to the [new consumer agenda](#) – the EU's strategy guiding the consumer policy for the 2020-2025 period. The agenda addresses immediate challenges that have emerged in the wake of the COVID-19 pandemic, and sets long-term priorities in five areas, including redress and enforcement of consumer rights. With no substantial amendments since their adoption, the ADR Directive and the ODR Regulation need to be streamlined with existing policy provisions in the policy area and match the consumer market's evolving trends, notably digitalisation. The intent to revise the ADR Directive and the ODR Regulation was announced in the [2023 Commission work programme](#) as part of the **Regulatory Fitness and Performance Programme (REFIT)**. Through the REFIT programme, the Commission assesses regularly whether EU legislation remains fit for purpose.² The two proposals for revision are classified as initiatives that help meet the targets of reducing reporting requirements for companies and public administrations in the [2024 Commission work programme](#).³

Consultations and studies underpinning the revision

In the context of this revision, the Commission has organised consultations, workshops, conferences and externalised studies, thereby **building a robust body of evidence** that underpins the 2023 evaluation report accompanying the Commission proposal.⁴ Regarding evaluations conducted alongside impact assessments in a 'back-to-back' setting (Tool #50), the Better Regulation Guidelines envisage for the public consultation to cover both ex-post and ex-ante aspects. In this vein, the Commission carried out a [backward-looking](#) and a [forward-looking](#) open public consultation, accompanied by a [call for evidence](#). The [ADR assembly](#) of September 2021 and a roundtable organised on 21 June 2022 brought together key stakeholders, such as ADR entities, national authorities, European Consumer Centres and academics, to exchange views on good practices and challenges relating in particular to digitalisation and the COVID-19 pandemic.

ADR is generally considered an effective redress mechanism, albeit with overall uptake still too low and not all EU consumers benefiting from ADR equally across the EU or economic sectors. The backward-looking public consultation, the ADR assembly and the roundtable pinpointed similar reasons for insufficient uptake of ADR:

- low awareness among both consumers and traders;
- lack of incentives for traders to participate where ADR schemes are voluntary;

- access barriers, such as linguistic issues and user-friendliness of digital services;
- limitations of ADR competence, in particular the limitation not to cover third-country traders;
- complexity of procedures, especially in relation to cross-border cases;
- lack of financial and human resources and guidance.

Regarding the ADR Directive's fitness for digital markets, the three stakeholder events conclude that technological advances offer possibilities to increase access and update ADR processes by making use of, for example, translation capacities and automated functionalities. At the same time, they draw attention to the need for digital literacy skills and equal treatment, as well as transparency when automated processes are used.

The roundtable's [final report](#) touches on the question of why the existing framework manages to catch only a fraction of potential cross-border disputes. It outlines issues relating to the expansion of online trading, which has led to platform operators and traders from third countries becoming more important, and issues relating to cross-border collective ADR.

At least three externalised studies fed into the evaluation report. A 2022 [study](#) analyses views presented in existing academic literature, and gives recommendations on the need to revise the ADR/ODR framework.⁵ A 2023 [information gathering](#) study, which provides a thorough assessment, sheds light on the ADR framework's shortcomings. It also draws lessons related to ensuring the ADR Directive's continued relevance, and looks at the added value of the ODR platform in its current form.⁶

A 2023 [behavioural study](#) on the disclosure of ADR information to consumers by traders and ADR entities⁷ seeks to find solutions that would increase awareness and take-up of ADR in practice through behavioural experiments. Although the information available on the ADR entity website does not seem to have decisive impact on the use of the redress mechanism, it remains an important information channel. The study concludes that ADR information on traders' websites should be separated from other information and not confined to, for example, traders' terms and conditions.

Commission evaluation

The [Commission proposal](#) of 17 October 2023 to amend the consumer ADR Directive was accompanied by a **back-to-back evaluation and impact assessment**.⁸ The [evaluation report](#) underpinned by the above-mentioned studies and public consultations sheds light on the ADR Directive's implementation and application in practice at both national and cross-border levels across all EEA countries. It concludes that the directive improved dispute mechanisms for EU consumers. However, issues relating to its narrow scope affect the directive's coherence with other legislation and its continued relevance in digital markets. In addition, traders lack awareness, and the uptake of cross-border ADR is low.

Effectiveness

The evaluation highlights that the ADR Directive has **brought a clear improvement** to the situation of consumers by providing them access to quality ADR entities in all areas of retail markets. The assessment shows that the directive was effectively transposed in all EU Member States and the EEA. However, its efficiency varies across countries owing to the diversity of national models. Below is a summary of the issues flagged by stakeholders and the respective conclusions of the evaluation in terms of how well the directive achieved its original objectives.

- **Concept of voluntary participation:** as an outcome of the public consultations and other activities involving stakeholders, the evaluation concludes that there is no evidence supporting the primacy of mandatory trader participation. The existing concept of parties, traders and consumers' voluntary participation to find an amicable solution to disputes prevails.

- **Uneven trader compliance to ADR outcomes:** the evaluation lists factors affecting traders' compliance with ADR outcomes. These include the legal effects and binding nature of the ADR decision, as well as the degree of compliance monitoring and impact on trader reputation. While a pertinent matter in some Member States, the ADR Directive does not report on systemic issues that would require enhanced enforceability of ADR outcomes.
- **Low uptake of cross-border ADR** is a significant systemic issue of the ADR Directive. Lack of sufficient guidance and practical provisions to ensure consumer access to cross-border disputes are identified as an area needing immediate action. In addition, a major concern is consumers' low awareness of cross-border ADR, which is nearly non-existent owing to language issues, complex procedures, costs and national differences in the applicable consumer law.
- **ADR awareness in general versus consumer rights awareness:** according to the evaluation, the directive's objective of ensuring access to ADR is only partially attained; this is due to practical problems, such as traders and consumers' lack of awareness and the complexity of ADR processes, which are reflected in the low uptake of ADR in some Member States or economic sectors.
- **Lack of understanding of eligibility requirements:** the evaluation reveals a lack of consumer awareness and understanding of how ADR entities function. Awareness is reported to be higher in sectors where well-established ADR entities exist and where sector-specific EU legislation requires the compulsory use of ADR.
- **Uneven compliance by businesses with ADR information requirements:** ADR information on websites of traders and ADR entities affects awareness and take-up of ADR among consumers. Separating ADR information on its own dedicated page, signposting it for more visibility and highlighting the benefits of ADR relative to the courts significantly increases consumers' understanding and potential to use ADR.

The evaluation also raises other issues relating to the ADR Directive's effectiveness, such as costs for consumers, disproportionate eligibility criteria and the diversity of the ADR landscape that makes it difficult for consumers to find a relevant ADR body.

Efficiency

The evaluation concludes that a lack of data on costs makes it difficult to calculate the **cost-effectiveness of ADR**, noting, however, that the ADR system is much more cost-efficient than bringing the same dispute to court. According to the evaluation, reducing identified reporting burdens, digitalising ADR and using modern technologies can increase the ADR systems' efficiency. In terms of ADR in Member States, the evaluation explains that costs vary significantly depending on existing infrastructure, funding models, number of accredited and monitored ADR entities and fees.

Coherence

The evaluation pinpoints some **internal coherence issues** regarding the role of consumer associations in collegial dispute resolution bodies. As regards **external coherence**, the evaluation raises issues of coherence with other EU consumer protection laws. The 2019 [amendment of Directive 2005/29/EC](#) on unfair commercial practices covers practices in pre-contractual and after-sales stages. In this light, the limitation of the ADR Directive to contractual disputes could restrict the consumer rights considered by ADR entities. In addition, the 2019 [amendment of Directive 2011/83/EU](#) on consumer rights ensures that its rules apply when the contract involves providing consumer data to the trader instead of payment. Conversely, the current ADR Directive only includes contracts where the consumer pays or undertakes to pay a fee. Furthermore the, **ADR Directive is not considered coherent with the wide-scope definition of some sector-specific pieces of legislation**. For example, [Directive 2008/48/EC](#) on consumer credits and [Directive 2014/92/EU](#) on payment accounts extend their coverage to consumer disputes about credit agreements and pre-

contractual disputes, respectively. By contrast, the ADR Directive is considered coherent with [Directive \(EU\) 2020/1828](#) on representative actions for the protection of consumers' collective interests and with [Regulation \(EU\) 2022/2065](#) (the 'Digital Service Act').

Relevance and continued relevance

In terms of **relevance**, the evaluation highlights the important contribution of ADR mechanisms during the COVID-19 pandemic and the recent energy crisis to dealing with the increased number of consumer disputes in these unusual situations. It notes that the expansion of digital markets exposes consumers more to unfair online practices. As consumers' awareness of ADR mechanisms is often limited, this leads to increased use of dispute resolution systems provided by platform operators falling outside the ADR Directive's quality criteria. This influences the **ADR framework's continued relevance**. In this regard, the evaluation considers the ADR Directive's scope too narrow when it comes to taking into account various types of disputes, such as pre-contractual and non-contractual issues. The evaluation underlines again in this context how the trend of a rapid and uncontrolled digitalisation has led to a strengthened role of third-country traders and the rise of private online dispute resolution systems operated by large online marketplaces.⁹

EU added value

When assessing EU added value, the Commission looks at the **value of EU policies over and above that created by Member States acting alone**. The ADR Directive impacts positively on the single market, as it ensures access to quality out-of-court dispute resolution for all EU consumers, regardless of their country of residence. The existing ADR mechanism has reportedly increased EU-wide networking including sharing of best practices and capacity building among ADR entities and national authorities. As one of the main lessons learned, the evaluation mentions the beneficial impact of the minimum harmonisation approach. It allowed Member States to take into account their pre-existing dispute-handling systems when transposing the ADR Directive. The evaluation also sheds light on the main challenges relating to this approach, namely diverging requirements across Member States. Conditions for accessing judicial proceedings differ across Member States; for example, ADR might be a mandatory requirement, which could create accessibility barriers potentially hampering consumers' rights in cross-border cases.

Impact assessment and Commission proposals

The [impact assessment](#) accompanying the proposal takes into account the findings of the existing ADR framework's ex-post evaluation. Overall, it builds on a broad evidence base and considers four policy options in addition to the baseline scenario, including a non-regulatory option. The EPRS [initial appraisal](#) of the impact assessment offers a succinct analysis of its quality in light of the Better Regulation guidelines. As an overall conclusion, it **considers the impact assessment solid** and evidence-based, and the choice of preferred option to be well substantiated and largely corresponding to stakeholders' preferences.

The **Commission proposals** for targeted amendments to the ADR Directive and the repeal of the ODR were published on 17 October 2023, at the same time as the 2024 [Commission work programme](#). In addition to these legislative proposals, the Commission published a [recommendation](#) on quality requirements for dispute resolution procedures offered by online marketplaces and Union trade associations.

The [Commission proposal](#) aims to **maintain the ADR Directive's current minimum harmonisation** approach, with targeted updates to ensure it fits today's consumer markets. The **scope of the directive** would be extended to cover traders located outside the EU selling goods or services, including digital content and digital services, to consumers living in the EU. The scope would be broadened also to include disputes relating to situations outside the contractual relationship and situations prior to the conclusion of the contract and relating to statutory consumer rights. This entails, for example, inappropriate commercial procedures and conditions; mandatory

information to be provided before the contract is concluded; prohibition of discrimination based on nationality or place of residence; and availability of services and supplies. Legal remedies in situations where products and digital content do not comply with requirements, as well as the right to change service providers and the rights of passengers and travellers, are also proposed to be brought within the scope of the ADR Directive. Furthermore, Member States should ensure that disputes within the scope of the directive and involving a trader established in their territory, or a **non-EU trader** offering goods or services to consumers living in the EU, could be referred to an alternative dispute resolution body. According to the proposal, ADR bodies could **bundle similar cases** against a certain trader into one procedure if the affected consumers are notified and do not object to it.

One important driver of the proposed amendments is their **contribution to simplifying ADR procedures by reducing ADR entities' reporting obligations** and traders' information obligations while encouraging traders to increase their engagement in ADR claims through the introduction of a **duty to reply**. This duty would mean that traders have to inform the ADR body whether they agree to participate in the proposed procedure within a reasonable time. In terms of cross-border disputes, the proposal introduces more **signposting and customised assistance** to consumers and traders through a national contact point and for the Commission to introduce user-friendly digital tools to help consumers identify a competent body to resolve their disputes.

Deemed inefficient and disproportionately costly, the option to revamp the ODR platform was disregarded, and the Commission [proposes](#) to repeal the ODR Regulation and to **discontinue the ODR platform**. EU directives containing references to it have thus to be updated accordingly.

European Parliament

During the ninth legislature (2019-2024), the European Parliament has addressed issues relating to alternative and online dispute resolution in the context of ensuring consumers' right to access redress when policies are revised to be aligned with digitalisation-related economic and societal changes. The petitions citizens have submitted to the European Parliament shed light on some of the problems with the practical implementation of the ADR Directive.

Selected parliamentary questions and resolutions on topical issues

On 23 January 2020, Petra de Sutter (Greens/European Free Alliance, Belgium) [posed](#) a **question for an oral answer** on automated decision-making to the Commission on behalf of the Committee on the Internal Market and Consumer Protection (IMCO). Her question was threefold. How does the Commission ensure: i) consumer protection from unfair commercial practices or from the risks posed by professional services based on artificial intelligence; ii) greater transparency in automated AI-driven processes; and iii) automated decision-making processes are based on non-biased and high-quality data sets. She also enquired what initiatives the Commission sought to undertake to ensure that the EU safety and liability frameworks remain fit for purpose. Commissioner Breton [responded](#) by highlighting how the question of properly framing the rules for the development of artificial intelligence in Europe is of primary importance. In terms of action, he referred to the white paper on artificial intelligence, which the Commission was about to present, and to the 2020 work programme, which anticipated the presentation of the [artificial intelligence act](#).

Based on this oral question, a [motion for a resolution](#) was put forward, resulting in a **resolution on a topical issue** of February 2020, 'Automated decision-making processes: ensuring consumer protection and free movement of goods and services' ([2019/2915\(RSP\)](#)). Among other issues, the Parliament reflected on how automated decision-making is applied in ADR mechanisms. Members called on the Commission to ensure that any forthcoming review of the ADR Directive and the ODR Regulation would take into account the use of automated decision-making and ensure adequate control mechanisms by natural persons.

In its [resolution](#) of 18 January 2023 on the 30th anniversary of the single market, Parliament called on the Commission to explore new digital opportunities and trends, to make sure that consumers are well-protected.

Citizens' petitions to the European Parliament

The [right to petition](#) offers EU citizens and all natural or legal persons residing in an EU Member State the option to submit, either individually or in association with others, a claim to the European Parliament on a matter that directly affects the petitioner and falls under EU competence.¹⁰ The European Parliament received several petitions regarding the implementation of the ADR Directive and referred them to the [Committee on Petitions](#) (PETI).

On 4 April 2019, a [petition](#)¹¹ complained about **Spain's compliance with the ADR Directive**. The petitioner claims that the Spanish law that transposes the ADR Directive into the national legal system does not provide an out-of-court settlement mechanism to manage disputes with banking institutions and financial services. The petitioner states that complaints in this area are submitted to the Bank of Spain, which according to her is not an independent body. On 26 August 2022, the Commission explained in its [reply](#) that it exchanged letters with Spanish authorities and held an informal meeting in order to clarify the actual effectiveness of the Spanish ADR framework to resolve consumer financial disputes. It concluded that the Commission would continue to follow up the developments in this field.

A [petition](#) from May 2021 criticised the lack of mandatory ADR mechanisms for **telecommunications service providers in Germany**.¹² The petitioner believes that telecommunications service providers do not respond to complaints adequately and do not participate in voluntary ADR proceedings. He calls for mandatory ADR participation for all companies and for the ADR Directive to specify that it applies to telecommunications service providers. In its [reply](#) to the PETI committee of 28 July 2022, the Commission guides the petitioner on where to get more information on the transposition of the ADR Directive in Germany. It explains that the ADR Directive does not impose mandatory participation on traders in ADR procedures, and that the outcome of these procedures is not binding on traders, although trader participation is encouraged. The petition was closed following a discussion in the PETI committee on 31 October 2023.

Lastly, a [petition](#) filed in November 2022 argued that **consumer interests lack adequate protection in Sweden**,¹³ and requested an inquiry into ADR procedures for road traffic injuries. The petitioner claims that the Swedish Road Traffic Injuries Commission would not meet the requirements outlined in the ADR Directive. In its [reply](#), the Commission stated that it does not have the power to act on the assessment of national ADR entity practices, and advised Parliament to reject the petition.

Views of other EU institutions and bodies

The Council of the European Union acts as a co-legislator in the ongoing [amendment of the ADR Directive](#) and the [discontinuation of the ODR platform](#) falling under the ordinary legislative procedure. The European Economic and Social Committee will deliver its opinion in due course. The requests for preliminary rulings provide clarity on the interpretation of certain provisions in EU law.

Council of the European Union

During the past five years, the Council has addressed issues relating to consumer rights and redress in various legislative files, such as on collective redress for consumers. In February 2021, the Council adopted **conclusions** on the [new consumer agenda](#), where it highlighted among other things the importance of an effective enforcement regime and appropriate redress mechanisms, and called for efficient ADR mechanisms, including ODR.

Court of Justice of the European Union

The Court of Justice of the European Union (CJEU) has given at least three **preliminary rulings** on alternative dispute resolution.¹⁴ The way **traders should inform consumers about the ADR** entity or entities to which they commit or are obliged to use in cases of disputes with consumers triggered a request for preliminary ruling in May 2019 ([Case C-380/19](#)). The judgment provided clarification on the interpretation of Article 13(1) and (2) of the ADR Directive. Accordingly, businesses have an obligation to inform consumers about ADR proceedings on their website and in the general terms and conditions of their contracts. It is not sufficient that the trader provides such information only on documents accessible on their website, or that information on ADR is presented in a separate document of the general terms and conditions, on conclusion of the contract subject to those general terms and conditions.

The preliminary ruling lodged in February 2016 ([Case C-75/16](#)) addressed the question of whether the **ADR's voluntary nature is compatible with national legislation on compulsory mediation**. In [conclusion](#), the ADR Directive does not preclude national legislation, which prescribes recourse to a mediation procedure, as a condition for the admissibility of legal proceedings relating to disputes in its scope (Article 2(1)). However, such a requirement should not prevent the parties from exercising their right of access to the judicial system.

In 2008, prior to the introduction of the ADR Directive and the ADR/ODR framework, the CJEU gave a preliminary ruling in the joined cases of Rosalba Alassini and others ([C-317/08 and C-320/08](#)). It stated that the EU rules do not preclude national legislation requiring a **dispute to be subject to an out-of-court settlement procedure before being admissible in court**. The ruling concerned the interpretation of the principle of effective judicial protection in a dispute between provider and end-users under the Universal Service Directive (2002/22/EC) and recommendations on alternative dispute resolution (98/257/EC and 2001/310/EC).

European Economic and Social Committee

At the time of this appraisal's publication, the European Economic and Social Committee (EESC) is in the process of drafting its [opinion](#) on the 2023 proposals to amend the ADR Directive and repeal the ODR Regulation, expected to be submitted to the EESC plenary session of 14-15 February 2024.

MAIN REFERENCES

Anglmayer I., [Alternative dispute resolution for consumers](#), EPRS, European Parliament, January 2024.
European Parliament, [Revision of alternative dispute resolution and online dispute resolution framework to improve the enforcement of consumer law](#), Legislative Train Schedule.

ENDNOTES

- ¹ Recommendation 98/257/EC of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes; Recommendation 2001/310/EC of 4 April 2001 on the principles for out-of-court bodies involved in the consensual resolution of consumer disputes.
- ² According to the Commission Better Regulation [Guidelines](#) and [Toolbox](#), the REFIT assessment seeks to identify 'opportunities to simplify laws, streamline procedures, and eliminate unnecessary burdens without undermining the objectives and benefits of the policy in question'. According to the Commission's Better Regulation Guidelines (Tool #2), REFIT requires all evaluations and all revisions to systematically analyse the potential for simplification and burden reduction. In terms of evaluations, the identification of potential simplification and burden reduction is part of the efficiency analysis in particular, which looks at the costs and benefits of the legal act in question.
- ³ These Commission proposals are listed among the 41 initiatives contributing to 'simplification' or 'rationalise reporting requirements' in Annex II of the 2024 Commission work programme.
- ⁴ Annex I to the evaluation report and p. 14 provide lists of research forming the report's evidence base.
- ⁵ It focuses on five countries' national legal cultures (Belgium, France, Germany, Italy and the Netherlands).
- ⁶ Annex I to this study includes three case studies: accreditation of ADR entities; use of ADR in the e-commerce sector; and use of ADR in the travel sector.
- ⁷ This externalised study is underpinned by behavioural experiments conducted in several Member States.
- ⁸ According to the 'evaluate first' principle of the Commission Better Regulation Guidelines, evaluations and impact assessments should by default be conducted successively, so that the results of the former can be fully used in the latter. However, the Better Regulation Guidelines envisage the possibility to conduct the evaluation and the impact assessment simultaneously and as a single process, as was done in this case.
- ⁹ When the Better Regulation Guidelines talk about the content of an evaluation report (Tool #47), this refers to continued relevance as an assessment of how the original objectives of an EU act reflected, and still reflect, current and future needs. This reflection should look in particular at the reasons of current and future needs and problems, also considering elements of strategic foresight. The findings will provide policymakers with information on whether to maintain, adjust or terminate the intervention.
- ¹⁰ Articles 20, 24 and 227 of the Treaty on the Functioning of the European Union (TFEU); Article 44 of the Charter of Fundamental Rights of the European Union.
- ¹¹ Petition No 0328/2019 by Esther Lorente, on behalf of the consumer rights section of the Bar Association of Barcelona.
- ¹² Petition No 0550/2021 by Martin Magdziak.
- ¹³ Petition No 1100/2022 by Anneli Andersson, on behalf of NRH Trauma Riks, signed by six others.
- ¹⁴ National courts may refer an issue relating to the interpretation of the EU Treaties or the validity and interpretation of acts of the EU institutions, bodies, offices or agencies to the CJEU for a preliminary ruling under Article 267 TFEU. In its ruling, the CJEU addresses only the specific issue of EU law defined in the request for a preliminary ruling, and the judgment is delivered to the requesting national court. However, preliminary rulings are considered to have a harmonising influence on the interpretation and application of EU law in all EU Member States and thus to ensure legal certainty.

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