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CORRIGENDUM
This document corrects document SWD(2023)335 final of 17.10.2023
Correcting "adjustment costs" to "administrative costs". Page 47.
The text shall read as follows:

COMMISSION STAFF WORKING DOCUMENT

IMPACT ASSESSMENT REPORT

Accompanying the document

Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directive 2013/11/EU on alternative dispute resolution for consumer disputes, as well as Directives (EU) 2015/2302, (EU) 2019/2161 and (EU) 2020/1828

{COM(2023) 649 final} - {SEC(2023) 347 final} - {SWD(2023) 334 final} - {SWD(2023) 337 final}

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Glossary

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

1. INTRODUCTION: POLITICAL AND LEGAL CONTEXT

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

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

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

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

The strengthening of private enforcement through the facilitation of out-of-court consumer redress has long been an objective of EU consumer policy. In its Single Market Act[1] of 2011, the Commission identified legislation on ADR as one of the levers needed to boost growth, strengthen consumer confidence and make progress towards completing the single market. Thus, in 2013, the European Parliament and the Council adopted both the Directive 2013/11/EU on alternative dispute resolution for consumer disputes ("ADR Directive"). At the same time, in order to promote ADR processes for online markets, they adopted the Regulation (EU) No 524/2013 on online dispute resolution ("ODR") which provides a messaging tool run by the European Commission (the ODR platform).

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

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

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

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

In 2019, the Commission adopted a report on the implementation of the ADR Directive and ODR Regulation, which revealed that the Directive had led to increased coverage of consumer markets by ADR entities throughout the EU[2]. However, the report also identified that consumer and business uptake of ADR procedures was still lagging behind in some sectors and Member States.

Recent data provided by national competent authorities in early 2022[3], as well as targeted consultations conducted by the Commission suggest that there is still room for improvements and that the issues highlighted in the 2019 report persist. The evaluation of the ADR Directive conducted in 2023 (see annex 6) confirms the need for its strengthening.

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

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

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[2] Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the application of Directive 2013/11/EU of the European Parliament and of the Council on alternative dispute resolution for consumer disputes and Regulation (EU) No 524/2013 of the European Parliament and of the Council on online dispute resolution for consumer disputes. COM(2019) 425 final.

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

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

2. PROBLEM DEFINITION

When the Commission adopted its proposal for an ADR Directive at the end of 2011, the total value of e-commerce sales in the EU was EUR 312 billion, representing 2% of the GDP of the Union.[4] In only 10 years, e-commerce rose to EUR 518 billion, accounting for 4% of the GDP in 2021.[5] These numbers illustrate the magnitude of the digital transformation that consumers markets have undergone. The last decade has also witnessed the surge of data-driven digital advertising and the raise of online intermediaries, which have intervened on the traditional B2C contractual relationships, increasing the complexity of consumer disputes. In digital markets, consumers should be able to obtain redress for issues explicitly related to the contract concluded with a trader but also for damages resulting from the unfairness of pre-contractual information or other breach of their rights under EU consumer law.

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

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

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

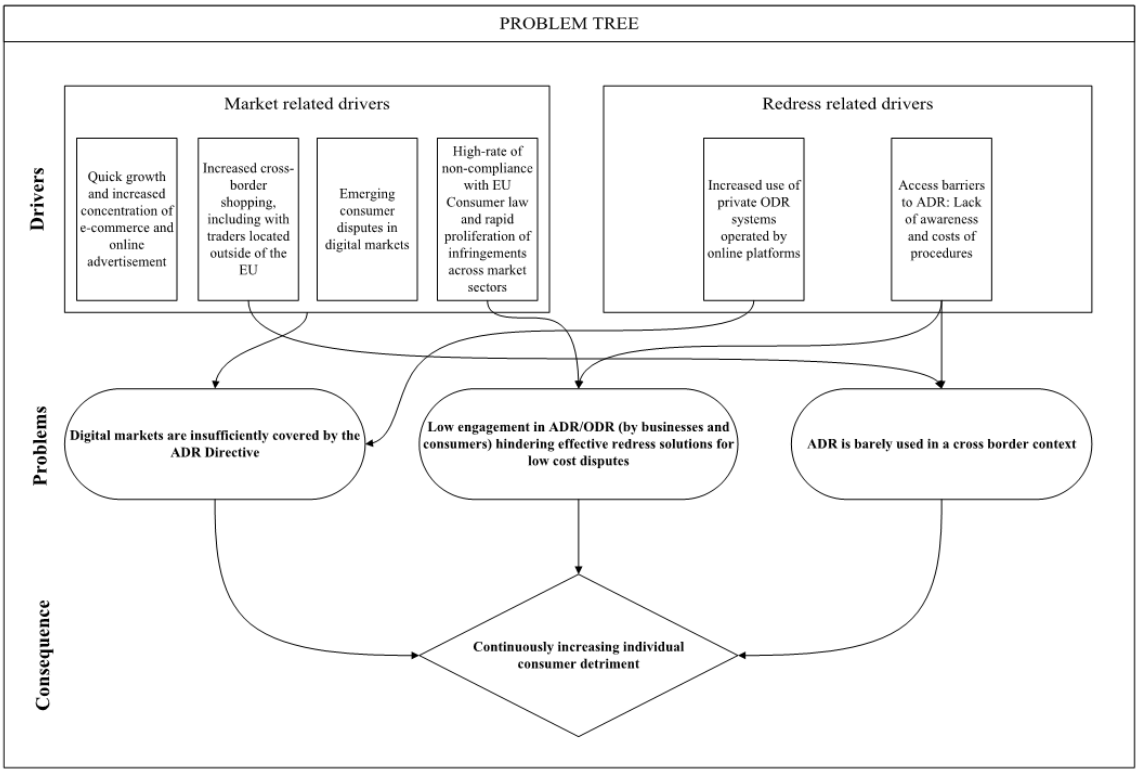
[5] 2021-European-E-commerce-Report-LIGHT-VERSION.pdf (ecommerce-europe.eu).

[6] Eurostat, Internet purchases - origin of sellers (2020 onwards), https://ec.europa.eu/eurostat/databrowser/view/ISOC_EC_IBOS__custom_3007818/default/table?lang=en. Online data code: ISOC_EC_IBOS

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

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

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



2.1. What are the problem drivers?

MEGATRENDS AND MARKET RELATED DRIVERS

<u>Quick growth and increased concentration of e-commerce and online advertisement</u>

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

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

From +19% in Denmark up to +44% in Spain, consumers shopped online more often due to the pandemic in 2020.[8] The share of enterprises' turnover on e-commerce went from 16% in 2016 to 20% in 2021 in the EU; for large enterprises alone, it went from 22% in 2016 to 27% in 2021.[9] The contribution of e-commerce sales to the European Union's GDP (i.e. e-GDP), rose from 2.5% in 2017 to 4% in 2021.[10] In the EU, e-commerce marketplaces generated EUR 115.4 billion in 2020 and experienced growth to reach an estimated range of EUR 120 – EUR 150 billion in 2021.[11]

The growth of e-commerce is driven by a number of global megatrends. According to the JRC, by 2030, the middle class, also referred to as the consumer class, is expected to reach 4.8 billion people worldwide, i.e. 1.3 billion more people with increased purchasing power compared to today.[12] The enlargement of the consumer base, combined with a widespread access to the Internet by 5.3 billion people (66% of the world population)[13] and a widespread ownership of mobile phones by three quarters of individuals aged 10 and above[14], is set to further spur the pervasiveness of online shopping. Fuelled by growing consumption and increased hyperconnectivity, global e-commerce, which amounted to USD 4.25 trillion in 2014, is expected to reach USD 7.39 trillion in 2025[15] (more than the values of the GDPs of France and Germany combined), representing an increase of 74%. Over the same period, global retail trade is predicted to increase by only 34%[16]. As a result, the market share of e-commerce in retail trade is expected to rise by 1 percentage point per year, and growth rate is anticipated to persist or even accelerate in the coming years.

In 2021, the average percentage of internet users in the EU who purchased goods or services at least once during the year was 74%, up from 63% recorded five years prior. Over the period 2016-2021, national disparities in e-shopping have been levelled out, largely due to the rapid acceleration of e-commerce growth fuelled by the pandemic.[17] The shift towards online shopping has further reinforced the existing markets concentration of online retail and marketplace businesses. In April 2021, the most visited online trader worldwide - Amazon – recorded 5.2 billion visits, while the second most visited trader – eBay – had 1.7 billion visits. In comparison, the10th ranked trader, China's Pinduoduo, had only 242 million visits and the 80th-ranked trader, Denmark's dba, stopped

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

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

[10] 2021 European E-Commerce Report, 2021-European-E-commerce-Report-LIGHT-VERSION.pdf (ecommerce-europe.eu).

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

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

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

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

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

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

[17] Eurostat, Online data code: isoc_ec_ibuy and isoc_ec_ib20.

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

Furthermore, in 2021, the expenditure in digital advertising worldwide accounted for 65% of the total ad revenue, and estimates indicate a continued growth trend, reaching 70% by 2025. This entails an increase from USD 500 billion to USD 690 billion,[19] with an estimated annual growth of 1 percentage point.[20] Similarly to e-commerce, the advertisement market is also highly concentrated: in 2022, Google and Meta alone accounted for about 53% of global spending in advertising, up from 46% that was recorded in 2016.[21] Amazon and TikTok have also seen a rapid rise in their global advertising share while traditional media advertising continues to experience a constant decline in share.[22]

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

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

Consumer disputes in digital markets going beyond contractual issues

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

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[18] WebRetailer, https://www.webretailer.com/b/online-marketplaces/.

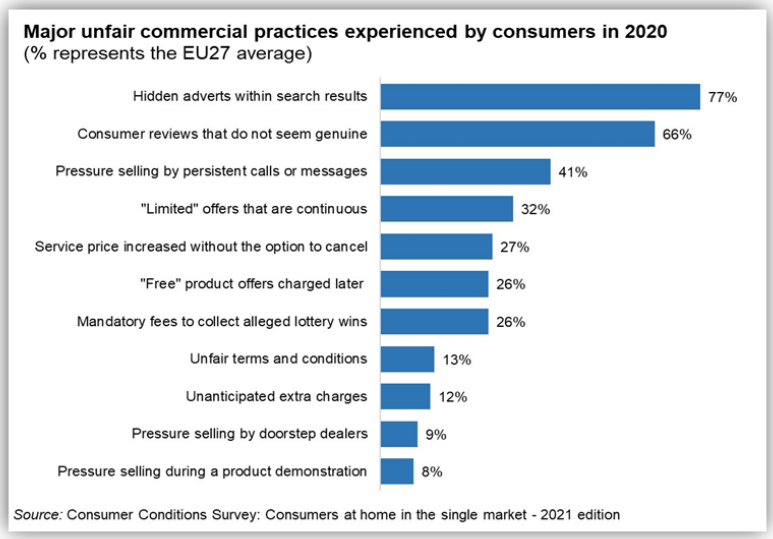
[19] GroupM. "Advertising media owners revenue worldwide from 2014 to 2027 (in billion U.S. dollars)." Chart. December 5, 2022. Statista. Accessed January 10, 2023. https://www.statista.com/statistics/236943/global-advertising-spending/.

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

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

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

[23] Eurostat, Internet purchases - origin of sellers (2020 onwards), https://ec.europa.eu/eurostat/databrowser/view/ISOC_EC_IBOS__custom_3007818/default/table?lang=en. Online data code: ISOC_EC_IBOS.



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

Significant rate of non-compliance with EU consumer law

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

The findings of the sweeps[27] conducted by national consumer protection authorities under the coordination of the Commission provide a clear picture on the rate of non-compliance with consumer law across digital markets. In 2022, authorities screened 16.000 products sold online and discovered that 43% of Black Friday discounts were misleading as they offered no real price advantage to consumers. In 2021, authorities found that among 223 major websites, 55%

[24] See Table "Willingness to take up ADR by claim value and procedure length; cumulated" under Problem 2 below.
[25] E-commerce statistics for individuals, https://ec.europa.eu/eurostat/statistics-explained/index.php?title=E-commerce_statistics_for_individuals#Purchasing_online_and_problems_encountered.
[26] See Consumer Condition Survey: Consumers at home in the single market – 2021 edition, available here: https://commission.europa.eu/system/files/2021-03/ccs_ppt_120321_final.pdf.
[27] "Sweeps" are coordinated screenings of e-commerce websites carried out by enforcement authorities simultaneously and in a coordinated manner under the CPC Regulation with the purpose of identifying and addressing infringements of EU consumer law within a given business sector. https://commission.europa.eu/live-work-travel-eu/consumer-rights-and-complaints/enforcement-consumer-protection/sweeps_en

potentially violated the UCPD[28] by publishing misleading information on the reliability of consumer reviews. In the same year, 42 out of 118 websites were flagged for contravening EU consumer law due to their inconsistency with the relevant information requirements governing online advertising of consumer credit. Furthermore, in the two sweeps conducted in 2020 on misleading sustainability claims and COVID-19 related claims, authorities found that almost half of the green claims reviewed were potentially false or deceptive, and that 206 out of 269 monitored websites misleadingly promoted products in the context of the pandemic.

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

REDRESS-RELATED DRIVERS

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

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

a) Lack of awareness

The report on the application of the ADR Directive, which was adopted by the Commission in 2019[30], emphasized that the primary obstacle preventing consumers and traders from engaging in ADR is their lack of awareness regarding the existence of ADR procedures and the benefits they may provide. Within the EU, 43% of retailers are unaware of the existence of ADR as a means to resolve disputes with consumers,[31] while 8% are aware but not willing to use it, and 13% report being aware but not finding a suitable ADR in their sector.[32] The Consumer Conditions Survey of 2021[33] revealed that only 5% of EU consumers who encountered a problem reported it to an ADR

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

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

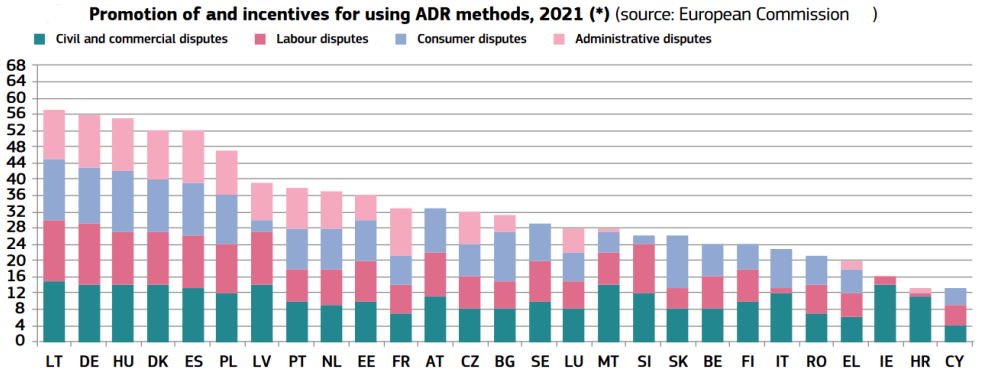
[30] See Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the application of Directive 2013/11/EU of the European Parliament and of the Council on alternative dispute resolution for consumer disputes and Regulation (EU) No 524/2013 of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

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

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

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

body, which accounts for roughly 2,250,000 consumers annually.[34] This figure represents a mere 0.75% of the total number of consumers, and only 15% of those who were dissatisfied with their retailer or service provider's handling of their complaint.[35] Awareness remains low in spite of the numerous awareness-raising[36] initiatives launched at national level. The 2022 EU Justice Scoreboard[37] indicates that most Member States already promote and incentivize the use of ADR for consumer disputes, making supplementary investment in awareness-raising unlikely to produce significant positive effects.



(*) Maximum possible: 68 points. Aggregated indicators based on the following indicators: 1) website providing information on ADR; 2) media publicity campaigns; 3) brochures for 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 use of 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 ADR is 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) possibility 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; and 17) 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 exists 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 only 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 civil 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 case.*

b) Costs of ADR procedures

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

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

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

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

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

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

ADR entities: Costs for ADR entities in the EU vary and largely depend on several factors, such as the size and location of the entities, as well as the types of disputes they are responsible for resolving. For example, in 2020, the Office of the Arbiter for Financial Services, one of the eight Maltese ADR entities, incurred a total cost of EUR 571,592 for staff and operations. In comparison, the Insurance Ombudsman, one of the fifteen Belgian ADR entities, spent EUR 1,732,857 in the same year.[39] These figures exclude translation costs for cross-border proceedings, which were identified as a significant challenge by Member States.[40] In terms of the costs incurred per dispute, the Spanish national competent authority for ADR has estimated a minimum of EUR 150 for a case, independent of whether the ADR entity is public or private. On the other hand, Lithuania, which operates under a public funding model, has provided precise insights into the average cost per dispute, thanks to the performance audit of consumer protection conducted by the State Audit Office in 2019.[41] According to the auditors' calculations, one dispute costs on average about EUR 300 to the Lithuanian ADR entities. Based on Lithuania's average cost per dispute, and a conservative estimate of at least 180,000 ADR disputes every year (figure concerning only 23 EEA Countries), the total cost of ADR in the EU can be inferred to be approximately EUR 54 million per year. This represents a significant amount that would require financing by either public funds or the parties involved in the dispute. Given that only three Member States (Hungary, Lithuania, and Latvia) rely exclusively on a public funding model for the ADR entities operating in their territory,[42] the cost of ADR services must generally be borne by traders and, to some extent, by consumers.

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

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

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

[39] Ibid.

[40] Ibid.

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

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

[43] Ibid.

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

Overview of fees charged to consumers by ADR entities

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

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

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

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[44] Information gathering for assisting the Commission in complying with its obligation under Article 26 ("reporting") of the ADR Directive and Article 21 ("reporting") of the ODR Regulation.
[45] However, two ADR bodies request to pay security deposit, which is refunded, if the claim is justified.
[46] This is the case for two ADR entities in PT. For two other ADR entities, the ADR competent authority noted the fee depends on the value of the damage.
[47] Only four of the 15 entities ask the consumer to pay a fee.
[48] The cost reported by CY is EUR 640 based on an 8-hour conciliation or mediation procedure. For every additional hour of conciliation or mediation, there is an additional fee of EUR 40 per hour for consumers regarding disputes of amounts over EUR 10 000 – the maximum amount paid by a consumer is EUR 800. For arbitration, the maximum amount paid by a consumer is EUR 1,000. See European Commission, Cyprus Consumer Center for Alternative Dispute Resolution, procedure, A. Fees details, available at: https://ec.europa.eu/consumers/odr/main/?event=main.adr.show2.
[49] Online marketplaces are here understood and defined pursuant to Article 2(17) of the Consumer Rights Directive as 'service[s] using software, including a website, part of a website or an application, operated by or on behalf of a trader which allow[s] consumers to conclude distance contracts with other traders or consumers. The Directive is available here: EUR-Lex - 02011L0083-20220528 - EN - EUR-Lex (europa.eu)

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

Case study: The eBay PODR system[53]

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

2.2. What are the problems?

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

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

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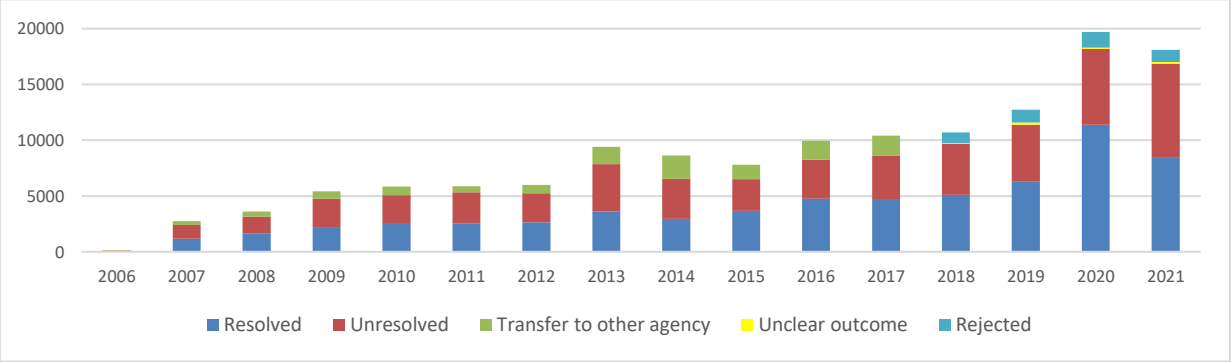
[50] Recommendations from academic research regarding future needs of the EU framework of the consumer Alternative Dispute Resolution (ADR). https://commission.europa.eu/system/files/2022-08/adr_report_final.pdf.
[51] Market Monitoring Survey, mms-overview-report-19-20_en.pdf (europa.eu).
[52] An increasing number of PODR systems offered by online marketplaces use automated decision-making.
[53] Case study: the use of AI in ODR, annex to Information gathering for assisting the Commission in complying with its obligation under Article 26 ("reporting") of the ADR Directive and Article 21 ("reporting") of the ODR Regulation.
[54] O Rabinovich-Einy and E Katsh, (2021), Artificial Intelligence and the Future of Dispute Resolution: The Age of AI-DR, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3830033.

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

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

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

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



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

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

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

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

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

c) Lack of quality of PODR systems

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

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

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

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

[59] Frustrated consumers rather than happy shoppers: Online marketplaces – consumer' real-life experiences (https://www.vzbv.de/sites/default/files/2022-03/20-12-14%20Evidenzsammlung%20Online-Marktpl%C3%A4tze_EN_final.pdf) & Information gathering for assisting the Commission in complying with its obligation under Article 26 ("reporting") of the ADR Directive and Article 21 ("reporting") of the ODR Regulation.

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

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

Problem 2: Low engagement in ADR among businesses and consumers

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

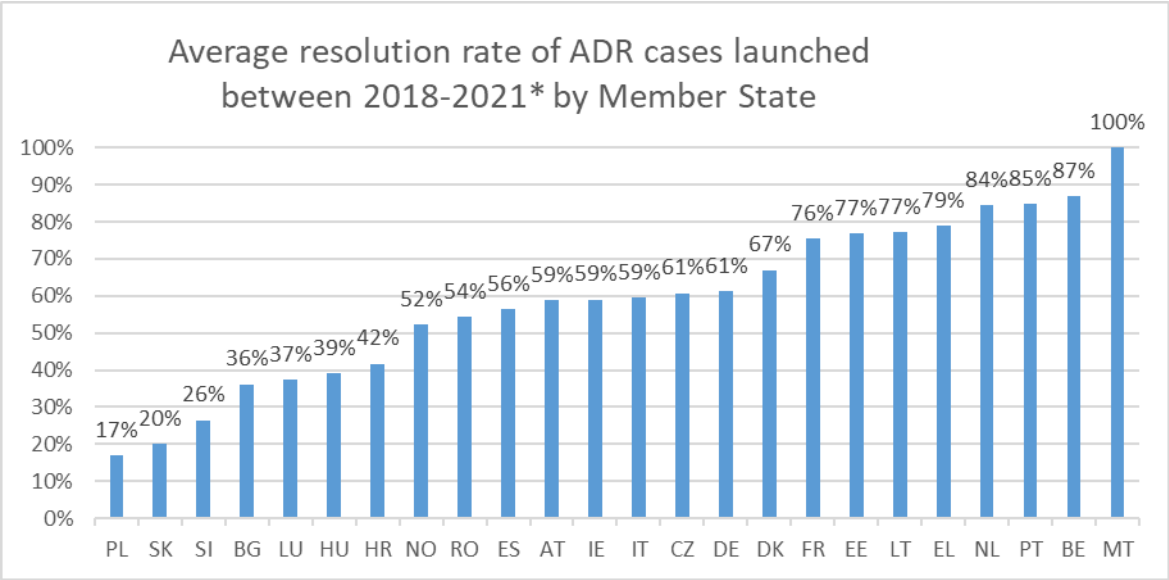
a) Low engagement in ADR by businesses

As noted above, approximately 1.95 million EU consumers are willing to file complaints with an ADR body annually. Nevertheless, the number of cases brought to ADR between 2018 and 2021 ranged from approximately 500 in Croatia to over 264,000 in Germany. In 2020, due to a surge of cases arising from various problems linked to the COVID Crisis, Germany recorded the highest number of disputes launched in a given year, with over 80,000 cases, followed by Italy with over 69,000 cases and France with 67,000 cases. The total number of eligible disputes launched by ADR schemes in Europe is about 300,000 per year [61], meaning that only 8% of those with a complaint would benefit from ADR.

[60] Details in Annex 4.

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

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



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

The Directive does not address the issue of whether traders' participation in ADR procedures should be mandatory or voluntary; instead, it leaves that decision to the individual Member States or sector-specific EU legislation.[64] The available data[65] indicate that in eleven Member States, participation is entirely voluntary, while in six others it is compulsory. In seven Member States, trader participation is mandatory only in specific sectors, and in four, it is mandatory only in specific situations. In cases where participation is voluntary, it is based on the goodwill of traders or the promotion of it made by trade associations, and therefore relies on their understanding and appreciation of its benefits.

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[62] Ibid.

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

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

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

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

b) Low engagement in ADR by consumers

Low consumer engagement is another key factor contributing to the insufficient uptake of ADR in the EU. To tackle this issue, it is important to understand what causes consumers' disengagement. The table below[67] illustrates how consumers would use ADR based on the value of their claim and the expected duration of the ADR procedure. The figures in the table are cumulative: for example, the 23% in the first column represents the total number of consumers who would use ADR if the issue could be resolved strictly within one week, those who would use it if the issue could be resolved within one month, and so on, up to those who would use it regardless of the time it takes.[68]

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

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

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

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

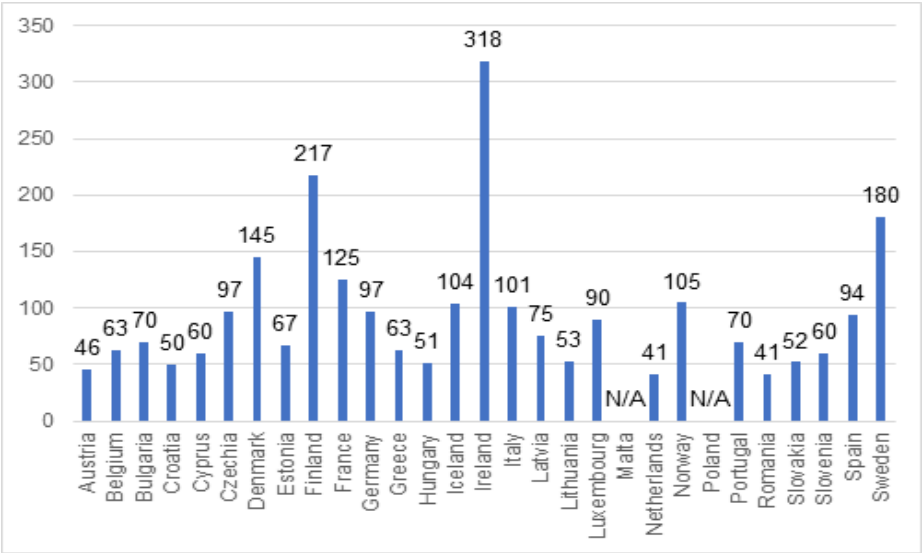
	Value of the claim						
	Less than €50	€50 - €200	€200 - €500	€500 - €1,000	€1,000 - €5,000	€5,000 - €10,000	> €10,000
Drop the case and lose the money	58%	17%	8%	4%	3%	3%	4%
Use ADR if the issue can be resolved within **1 week**	23%	67%	77%	79%	76%	70%	39%
Use ADR if the issue can be resolved within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

Note: N = 4,050. Amounts in EUR were converted for local currencies and adjusted for cost of living where appropriate. Data are weighted. Coloured rows indicate the rows with cumulative percentages, adding the equivalent percentage of itself and all subsequent *blue* rows. Percentages do not add to 100% since some cells are cumulated within the table.

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

Average duration (in days) of an ADR dispute in the EEA[69]

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



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

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

However, the Platform is clearly not achieving its intended objectives. Data shows that while it attracts a relatively high number of visitors[70], only **very few consumers use it to contact a trader and request an ADR procedure: just over 13 000 complaints were made EU-wide in 2021**. The vast majority of these requests (80%) remain un-attended by traders who chose to remain silent while about 20% of traders explicitly refuse. 99% of the cases are therefore automatically closed after 30 days. The number of claims that is eventually resolved thanks to the platform mechanism is extremely low: only 1% of the 13 000 requests (169 in 2021). This low usage indicates that **the ODR platform is not encouraging traders to participate to an ADR process and also** does not corresponds to the needs of consumers in digital markets as only a minority of visitors try to use it. For more information on the ODR platform functioning and issues please see Annex 7.

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

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

[70] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52019DC0425&from=EN. Since its launch, the platform has attracted more than 8.5 million visitors in total. .
[71] On a very large sample of nearly 19,500 total refusals from traders.

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

The **complex legal and organizational context of cross-border ADR** is the primary factor accounting for its lower uptake as compared to domestic ADR. In this respect, it must be noted that while under the Brussels I Regulation[72] consumers have the possibly to submit disputes over a consumer contract with an EU-established trader before the courts of their Member State of domicile, the ADR Directive does not provide any specific geographical mechanism for cross-border ADR disputes. However, since the ADR Directive requires the Member State in which the trader is established to ensure that any consumer disputes involving that trader can be submitted to a quality-certified ADR entity, there is always an ADR entity competent to deal with a consumer dispute in the Member State where the trader is established largely influencing which ADR entity will be most likely preferred by the trader and condition to its participation.

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

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

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

2.3. How will the problem evolve?

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

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

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

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

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

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

The growth of e-commerce will also lead to an **increase in cross-border shopping** within the EU and between the EU and third countries. However, consumers will continue to be unable to resolve their disputes in relation to most of these purchases. This will potentially fuel consumer mistrust in cross-border shopping and hinder the development of the digital single market. Moreover, the current levels of engagement in ADR, which are already unsatisfactory, will stagnate and eventually decrease due to a widespread awareness of the limitations of ADR, thereby leading to the discouragement of consumers. As a result, consumers may explore other methods to resolve their disputes, including PODR systems and private claims management companies, which usually collect a fee of up to 30% of the consumer claim[76], or alternatively, may opt to give up on enforcing their rights altogether.

The accumulation of these problems eventually results in an increase of consumer detriment. The extent of this detriment can be measured by considering the consumer harm that is strictly related to the missed opportunity of not using ADR. By taking into account the 120,000 eligible disputes[77] (i.e. filed by a consumer and confirmed by an ADR entity, as per data transmitted by ADR Competent authorities to the Commission in 2022) that are not accepted by businesses on a yearly basis, the maximum consumer detriment amounts to EUR 22.2 million per year.[78] In addition to this, the detriment of consumers who brought a matter to the ADR entity which, for various reasons, was not deemed eligible (for example in relation to extra-contractual claims) must also be taken into account. This group comprises 1.95 million consumers,[79] and the potential additional detriment stemming from the fact that they cannot settle their dispute through ADR amounts to EUR 361 million per year[80], for a total annual detriment **of EUR 383 million.**

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

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

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

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

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

[80] 1,950,000 x EUR 185.

3. WHY SHOULD THE EU ACT?

3.1. Legal basis

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

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

3.2. Subsidiarity: Necessity of EU action

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

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

3.3. Subsidiarity: Added value of EU action

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

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

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

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

4. OBJECTIVES: WHAT IS TO BE ACHIEVED?

4.1. General objectives

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

4.2. Specific objectives

Make ADR fit for digital markets

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

Improve consumers' and traders' engagement in ADR

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

Enhance cross-border ADR

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

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

5. WHAT ARE THE AVAILABLE POLICY OPTIONS?

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

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

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

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

While the ADR framework remains unchanged, new substantive laws will come into play, increasing and clarifying consumer rights (notably in relation to precontractual information) and this will be a motivation for consumers to seek to obtain the benefits of such rights.. For instance, following the 2019 amendment to the **Consumer Rights Directive**, the rules of this Directive apply to contracts where the trader provides digital content, and the consumer agrees to the use of their personal data (instead of paying a fee). However, given that the contractual disputes covered by the ADR Directive are linked to the payment of a monetary fee, consumers may not have a practical way of enforcing these new rights out-of-court. A similar risk could be anticipated also in relation to the forthcoming **Consumer Credit Directive**,[82] which, once adopted, will provide consumers with a more robust set of information rights at the advertisement and pre-contractual stage. There is also the Commission's proposal on Empowering consumers in the green transition[83] that is being finalised and is expected to increase the protection against misleading green claims made at the pre-

[82] Proposal for a Directive of the European Parliament and of the Council on consumer credits: EUR-Lex - 52021PC0347 - EN - EUR-Lex (europa.eu)
[83] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0143

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

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

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

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

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

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

5.2. Description of the policy options

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

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

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

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

	Option A Non-regulatory intervention	Option B Light-touch revision	Option C Targeted amendments	Option D Architectural changes and increased harmonization
Make ADR fit for digital markets	❖ Maintain current scope and provide trainings to entities ❖ Work with online intermediaries to establish best practices / guidelines	❖ Option A + ❖ Clarify inclusion of third-country traders	❖ Widen material scope of ADR to include any dispute, including consumer extra-contractual disputes and disputes with third-country traders ❖ Introduce obligation for platforms that provide PODR to obtain self-certification attesting that they meet the quality criteria established by the Directive	❖ MS to designate residual entity in charge of cross-border / digital disputes ❖ Extend quality criteria of ADR directive to platform's dispute resolution systems (under supervision and audits from ADR NCAs)
Increase consumers' and traders' engagement in ADR	❖ Awareness-raising campaigns to promote ADR ❖ Clarify better the sectors where there is mandatory participation under national law	❖ Allow national authorities to publicly disclose identity of retailers who do not engage in ADR ❖ Promote use of trust-marks for traders participating in ADR	❖ Replace ODR platform with signposting tools ❖ Traders duty of reply to ADR entities, and removal of obligations to disclose information ❖ Allow bundling of similar cases	❖ Replace ODR platform with signposting tools ❖ Oblige MS to have only one ADR body per retail sector, complemented by one residual ADR ❖ Harmonize ADR procedures ❖ Mandatory participation of traders in ADR procedures ❖ Allow bundling of similar cases
Facilitate cross-border ADR	❖ Create a standardized, information template that ADR entities could use to provide clear information in different languages ❖ Adoption of AI tools for instant translation	❖ Option A + ❖ Strengthen quality criteria to ensure that natural persons in charge of ADR are qualified for cross-border disputes (legal and linguistic expertise)	❖ ECC to act as contact points to facilitate consumers' access to ADR entities for cross-border issues ❖ Provide self-certification mechanism for EU-level trade associations and other relevant bodies and allow them to set up cross-border dispute settlement systems	❖ Establish EU mechanism for ADR cross-border complaints

Policy Option A - Non-regulatory intervention

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

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

Policy Option B – Procedural and geographical scope revision

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

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

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

Policy Option C – Material scope amendments and new business obligations

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

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

Policy Option D – Architectural changes and increased harmonization

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

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

5.3. Options discarded at an early stage

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

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

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

6. WHAT ARE THE IMPACTS OF THE POLICY OPTIONS?

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

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

Option A: Non-regulatory intervention

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

on quality and best practices. Consumers' awareness of ADR is however highly uneven across the EU, as confirmed by the European Consumer Organization (BEUC) in their 2022 report on ADR.[85] Creating a standardized, easy-to-understand information template that ADR entities could use to exchange information during cross border disputes could help reduce the consumer difficulties to participate in a cross border ADR process and thus address a part of the detriment linked to cross border issues not addressed, but the impact of this measure is also expected to be limited. Similarly, adoption of **AI tools for instant translation** of documents by ADR could prove helpful_with cross-border cases. All in all, the reduction in consumer detriment would remain limited as those measures are not expected to improve participation in ADRsignificantly. **Social impacts:** This measure is expected to have positive impacts. Training programs for ADR entities could create additional jobs. Self-regulation of PODR by online marketplaces, if picked up by the platforms, would improve the governance of those businesses.

- **Environmental impacts:** None.
- **Impacts on fundamental rights:** Since Policy Option A is non-regulatory, its impact on fundamental rights is expected to be limited. Nevertheless, the implementation of specific policy measures within this option, such as better awareness-raising campaigns and the use of standardized templates for information exchange between ADR entities in cross-border disputes, could potentially enhance consumer protection in accordance with **Article 38 CFREU**.
- **Effectiveness:** To make ADR more suitable for digital markets, the option would rely on training for entities and enhanced exchanges of best practices between ADR entities, which is expected to have limited positive impacts for consumers. Previous efforts to increase consumer and trader engagement in ADR through awareness-raising campaigns have shown limited success (as outlined in the problem definition). Promoting templates for information sharing among ADR entities, coupled with the adoption of AI tools for accurate translations of supporting documents could facilitate to a certain exchange cross-border ADR. **Score: 2/5**
- **Efficiency:** compared to the modest results mentioned above, the costs for this option are relatively high for all parties involved. **Score: 0/5**[86]
- **Coherence:** Policy Option A would have an overall limited impact on the coherence with other EU legal instruments as it does not envisage any legislative measures. However, a number of non-legislative initiatives proposed under this policy option could increase coherence by promoting convergence in the interpretation and application of EU law by ADR entities in different Member States. For example, implementing a system to facilitate the exchange of best practices would help ensure more consistent private enforcement of consumer law across the EU. Similarly, using standard templates for exchanging information in cross-border cases is likely to reduce fragmentation in ADR outcomes. Policy Option A would also align with other non-legislative initiatives taken at the EU level. Providing increased capacity-building support aligns with the **Single Market Programme**'s objective to strengthen the functioning of the internal market, while engaging in dialogue with platforms to ensure that they provide consumer-friendly

[85] BEUC, Alternative Dispute Resolution For Consumers: Time To Move Up A Gear, June 2022.
[86] See Annex 4 for the calculation. Based on net benefit for the quantifiable impacts: EUR 0.

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

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

Option B: Procedural and geographical scope amendments

- **Economic impacts:** in addition to the measures assessed under Option A, Option B would broaden the scope of the Directive to include disputes between consumers and **third-country traders**. According to the problem definition, these consumer complaints could make up approximately 5% of the total (ECC data). Out of the 180,000 disputes currently resolved (as outlined in the problem definition), this would add up to **9,000 more**, resulting in a cost of up to EUR 2.7 million for **ADR entities** to process them (up to **EUR 24 million in 10 years**).[88] However, these additional disputes would **pre-empt larger costs** that would be incurred by several parties if the cases went to court. If the **consumers** win 90% of these disputes[89] (with businesses accepting the outcome of the ADR procedure), this would **reduce detriment** of up to about EUR 1.5 million every year,[90] i.e. up to **EUR 13 million in 10 years**. It is unlikely, however, that many third-country traders would agree to participate in ADR disputes. The numbers above only apply if 5% of complaints translate proportionally to 5% of disputes; the actual figures are expected to be significantly lower. **Allowing national authorities to disclose the identity of retailers who do not engage in ADR** would entail the preparation and the maintenance of ad-hoc databases, with **costs associated for NCAs** (0.5 FTEs at EUR 33.500 per FTE[91], i.e. EUR 450,000 per year considering all Member States, **EUR 4 million in 10 years** plus IT costs). Consumers would save time by consulting this database as they would know in advance whether the business they have issues with is likely to engage in ADR. **Trust-marks** to give visibility to consistent ADR engagement by businesses would be complementary with the use of the database. For these businesses, this measure could boost their market reputation and increase their sales thanks to more consumer trust. **Strengthening quality criteria** to ensure that natural persons in charge of ADR are qualified for cross-border disputes (legal and linguistic

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

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

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

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

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

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

- **Social impacts:** The database of businesses refusing to participate in ADR would come at the price of some reputational damages for the businesses concerned. The inclusion of third-country traders within the scope of the Directive would level the playing field for EU and non-EU businesses. Strengthening quality criteria for experts working for ADR entities would improve qualifications of ADR professionals.
- **Environmental impacts:** None.
- **Impacts on fundamental rights:** By extending the scope of the Directive to disputes between EU consumers and traders established outside the EU, Policy Option B would provide consumers with an additional avenue to obtain redress, thereby strengthening their right to an effective remedy pursuant to Article 47 of the CFREU. However, the naming and shaming of traders who refuse to engage in ADR could potentially encroach on their freedom to conduct business under **Article 16 of the CFREU** and raise serious issues regarding the presumption of innocence under **Article 47 of the CFREU.**
- **Effectiveness**: The option would contribute to the modernisation of ADR as the inclusion of third-country traders reflects the recent market developments, providing additional redress opportunities for consumers buying goods and services online from companies established outside the EU. The naming and shaming traders who do not engage in ADR while promoting those that do so through trust-marks would **increase consumers' and traders' engagement in ADR** as consumers would know upfront which businesses are willing to participate to a dispute. Furthermore, the strengthening of quality criteria for the natural persons in charge of ADR would **contribute to the enhancement of cross-border ADR,** but only if awareness is high. **Score: 3/5**
- **Efficiency:** More ADR disputes entail more costs for ADR entities. The awareness raising measure also imply some costs. Stricter quality criteria for natural persons in charge of ADR impose costs for ADR entities (as they would have to train/recruit specialised staff). **Score: 0/5**[92]
- **Coherence:** Similar to Option A, Option B would also have limited impact on coherence since the proposed legislative measures aim only at providing legal clarity and additional policy tools to increase engagement in ADR among consumers and traders. These measures would in any event be consistent with other similar initiatives undertaken at the EU level. For example, the use of trust marks to promote traders' engagement in ADR could draw inspiration from the EU trust mark introduced by the **eIDAS Regulation**[93] to enhance the user's confidence in online transactions. **Score: 2/5**
- **Stakeholders' view:** Given the increase in transactions between EU consumers and non-EU traders, stakeholders strongly support extending the scope of the Directive to cover such transactions. According to the results of the public consultation, 76% of 111 respondents find this extension very relevant or relevant. However, in response to the Call for Evidence and during the cross-border ADR roundtable, it was highlighted that incentivizing non-EU traders to

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

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

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

Option C: Material scope amendments and new obligations for traders

- **Economic impacts:** This option would make the number of potential ADR disputes increase by about 4.5% as a direct consequence of the extension of the material scope of the Directive to disputes consumer disputes going beyond strict contractual issues.[94] Currently, as seen in the problem definition, there are approximately 2,250,000 consumers experiencing issues and who potentially would like to resolve them with ADR. However, this high number of consumers interested in ADR translates into only 300,000 eligible ADR disputes per year in the EU. Of these 2,250,000 consumers, approximately 4.5% has a dispute that today would fall outside the scope of the ADR Directive and would thus be ineligible for ADR (100,000 disputes). Therefore, potential disputes with this measure increase to 400,000. For each eligible dispute, a notification is sent by the ADR entity who receives a complaint to the business concerned for initiating the dispute out-of-court. Out of these 400,000 notifications sent by ADR entities to businesses, 240,000 would become disputes,[95] while approximately 128,000 would go unanswered.[96] If a duty to reply is introduced in the Directive, it is estimated that the **cost for businesses** to send a single reply is around EUR 20 (including preparation, processing and sending), resulting in a total cost for businesses of EUR 2.6 million per year, or **EUR 23 million in 10 years**.[97] A share of the 128,000 potential disputes for which businesses would now have to reply[98] could turn into actual disputes, with negative answers from businesses resulting in enhanced certainty for consumers, who could decide to bring their claim (or not) elsewhere. Out of the 128,000 potential disputes, it is estimated that approximately 77,000 would turn into actual disputes[99] (mostly those linked to businesses previously unaware of ADR, for a total of nearly 200,000 new

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

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

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

[97] 3% discount factor applies for actualising values.

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

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

disputes under this policy option[100]). If **consumers** win 90% of the times (with businesses accepting the ADR outcome), it would **reduce detriment** by EUR 33 million annually,[101] i.e. **EUR 290 million in 10 years**. However, handling these 200,000 new disputes might cost up to EUR 60 million annually[102] (EUR 527 million in 10 years) for ADR entities, which could be funded in various ways[103]. Enabling **the bundling of similar cases by ADR entities** would generate savings for them (as a result of more efficient handling), offsetting their costs by EUR 11 million annually (i.e. EUR 97 million in 10 years)[104]. The **net extra costs for ADR entities**, taking into account economies of scale, could range from EUR 0 to EUR 49 million annually (EUR 25 million on average), or from EUR 0 to EUR 430 million in 10 years (**EUR 215 million on average**). ADR entities incurring costs can also pass them on to the traders, knowing that they would still save compared to going to court. The duty of reply would replace the current requirement to **disclose information on ADR**, for businesses who do not intend nor are obliged to resolve disputes through ADR (64%[105] of traders)[106]. It is known from the Impact Assessment linked to the current ADR Directive[107] that the inflation adjusted cost of providing information to consumers is about EUR 310 per business.[108] This is mostly a one-off cost. Every year, for newly established businesses who do not adhere to any ADR entities,[109] the total savings would amount to EUR 99 million annually,[110] i.e. EUR 870 million in 10 years; a share of the costs stemming from "adding information on ADR in contracts, invoices, receipts, websites, brochures/leaflets"[111] would then be saved also for current businesses, for a total of EUR 165 million per year, i.e. EUR 1.4 billion in 10 years (**EUR 2.3 billion in 10 years in total as savings for businesses**). **Replacing the ODR platform** with signposting tools would **save the**

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

[101] 200,000*90%*EUR 185.

[102] EUR 300 per dispute, see problem definition.

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

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

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

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

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

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

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

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

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

European Commission about EUR 500,000 per year[112], i.e. **EUR 4.4 million in 10 years.[113]** A behavioural study conducted on ADR information requirements[114] showed that the currently requirement for traders to clearly disclose on their websites the ODR link does not positively impact on consumer's intention to use ADR; Thus, removing it would not produce any negative consequences on consumer engagement in ADR. Businesses operating online would not need to maintain an e-mail address for ODR correspondence, saving EUR 100 per year.[115] The total **benefit for businesses** would then be EUR 370 million saved per year, i.e. **EUR 3.3 billion in 10 years**. Also, newly established businesses in the EU in the next 10 years would not incur costs to provide ODR information on their website, but this estimate is already included in the calculations linked to the removal of ADR information, presented above. Regarding the **obligation for marketplaces that provide PODR to show abidance by high-quality dispute resolution standards through self-certification**, it is known from the problem definition that, among nine important marketplaces, the average perceived[116] compliance rate with the quality criteria laid down by the Directive is 67%. The self-certification scheme will let this figure tend towards 100% in the whole market, an improvement of 33% which is not directly quantifiable but leads to a **concrete reduction in consumer detriment,** as it would help consumers by countering unfairness and promoting a **level playing field for online marketplaces.** This would require large businesses to be subject to similar quality criteria as digital businesses operating mostly on domestic markets and SMEs when using standard ADR. Among the 12 quality requirements of the ADR Directive for which the mini-sweep on PODRs was performed, the lowest scores on perceived compliance concerned in particular five questions.[117] From these, it appears that the most significant share of additional costs for online marketplaces would stem from hiring impartial mediators trained on consumer law and making sure translation (even automatic translation) is provided to the consumer. There are 438 online marketplaces selling in the EU with 1000 Internet domains,[118] and it is estimated that half of them may already have a Private Online Dispute Resolution (PODR) platform or may only need marginal improvements to meet the quality criteria set by the ADR Directive. This would mean that 110 businesses

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

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

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

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

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

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

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

would need to significantly improve their processes to match the criteria, incurring costs such as hiring lawyers expert in consumer law to oversee the dispute resolution process (EUR 100,000 per year) and purchasing automatic translation tools (EUR 10,000 lump sum). The total estimated **cost over 10 years would be EUR 97 million** (or EUR 11 million per year). **Granting ECCs** a supporting role means that ECCs would have to assists ADRs with questions about applicable law in other EU countries, translating correspondence and documents relevant for the case, etc. This is estimated to require about 50 FTEs in the whole EU, re-absorbing the equivalent number of posts acting act as ODR contact points in the Member States. This zero-cost measure[119] would in turn further decrease consumer detriment and save costs to the ADR entities. The measure to establish a self-certification mechanism for EU-level trade associations whereby they could take on a role (on a voluntary basis) in setting up cross-border dispute settlement systems is estimated to have limited additional costs for the interested associations. The option also includes **extending the scope to third-country traders**, but the measure is not included in this assessment of the economic impacts of Option C due to its dependence on the willingness of traders to engage in ADR disputes, which is considered low.

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

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

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

- **Efficiency:** The option reaches the objectives by bringing a total of EUR 5.6 billion in 10 years of savings for businesses thanks to the removal of disclosure obligations (even though a few large businesses are expected to incur costs of EUR 97 million in 10 year; this would foster a level playing field). This would be complemented by EUR 4.4 million in 10 years of reduction in costs for the Commission and EUR 233 million of additional costs for ADR entities (which would however pre-empt larger costs to be incurred by several parties if the cases end up in court and could pass the costs onto traders). **Score: 5/5**[120]
- **Coherence:** Policy Option C would significantly enhance the coherence of EU consumer protection legislation. It clarifies the scope of the ADR Directive by making it explicit that it applies to any consumer disputes (regardless of whether they are related to contractual issues). This option would bring the ADR Directive in line with **Article 11(a) of the UCPD**, which provides that 'consumers harmed by unfair commercial practices shall have access to proportionate and effective remedies'. In this respect, consumer ADR could be argued to constitute an accessible and effective remedy against unfair commercial practices. In general, by broadening the category of admissible disputes and increasing awareness of ADR among consumers and traders, this policy option would dovetail with a number of EU legal instruments, including the **European Small Claims Procedure**[121], the **Mediation Directive**[122] and the **Representative Action Directive**[123], as they all share the common objective of promoting access to justice. On a different note, the requirement for online marketplaces to provide high quality ODR services to resolve consumer disputes between their users would be coherent with their obligations under **Article 20 and 21 of the DSA** to provide sound complaint handling systems and access to out-of-court dispute settlement systems for content moderation disputes. Although the revised ADR and the DSA would have different targets, the former pertaining to consumer disputes and the latter focused on content moderation disputes, as well as different systems to attain them, the ADR Directive through self-certification and the DSA through obligations laid down in the Regulation, both strive to facilitate fair, affordable and efficient resolution of disputes within the online ecosystem. **Score: 5/5**

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

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

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

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

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

Option D: Architectural changes and increased level of harmonization

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

[124] There is no information on the size of the businesses more involved with ADR disputes, but it is expected that a large number of the 300,000 eligible disputes is with large businesses.
[125] 120,000*90%*EUR 185.
[126] EUR 100 x 120,000 disputes.

ADR entities would experience economies of scale after a certain point, and only marginal costs of adding extra disputes should be taken into account. The **bundling measure** (collective ADR redress) would also have an offsetting effect which, if 10% of disputes are bundled together, amounting to EUR 9 million per year or EUR **79 million in 10 years**.[127] The total costs for ADR entities (which they could pass on to traders) would then be between EUR 0 and EUR 27 million per year (EUR 14 million on average), i.e. between EUR 0 and EUR 237 million in 10 years (**EUR 119 million in 10 years on average**). **Extending the quality criteria of the ADR directive to platform's dispute resolution systems (under supervision and audits from ADR NCAs)**, would result in similar impacts to Option C with the difference being that there would be a process of certification process and audits instead of self-certification s. Hence, as in Option C, total costs in 10 years for online marketplaces to comply would amount to EUR 97 million, but in addition they would have to file the reports, for a total of 0.5 FTEs for each business (one-off) and 0.1 FTE every year to follow up on the file (at EUR 33.500 per FTE[128]), i.e. EUR 5,000,000 in 10 years.[129] The **total cost for large business would therefore amount to EUR 102 million in 10 years.** In addition, the supervision and audits from ADR NCAs over 110 large businesses could translate into 10 audits per year, entailing a cost of 2 FTEs (EUR 31,700 per FTE the average in MS[130]) and 2 more FTEs for supervising, for a total of EUR 1,100,000 in 10 years. Given that six Member States regularly perform on-the-spot checks on ADR entities as part of their monitoring mechanisms,[131] with an estimated cost of EUR 10,000 for each Member State, in 10 years this would amount to additional EUR 500,000 for NCAs. **Total costs for NCAs would then amount to EUR 1.6 million in 10 years.** As in option C, the benefits would be a **concrete reduction in consumer detriment** mostly connected to the enhanced quality of PODR, as well as **level playing field for businesses**. Requiring MS to designate a **residual entity in charge of digital disputes,** as well as establishment of a residual EU-level ADR entity for cross border complaints (including with non-EU traders) would provide consumers with a convenient one-stop-shop solution for resolving their disputes out-of-court. This would be especially beneficial in a mandatory ADR framework, where confusion about where to seek redress could be particularly problematic. The residual entity designated by the MS would have to be staffed with legal experts in digital disputes, with an estimated cost of at least 2 FTEs per MS, totalling EUR 1,800,000 per year,[132] i.e. **EUR 16 million of costs in 10 years for the 27 MS**. The EU-level entity for cross-border disputes, which would be an already existing, fully operational one selected by the Commission (through a tender/grant) would have the resources to be able to handle disputes in 23 official languages of the EU. Even if automatic translation is implemented, the supervision of at least 1 FTE per language is envisaged. That would mean

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

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

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

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

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

[132] EUR 33,500 x 2 FTEs x 27 MS.

about EUR 770,500 per year[133], which in 10 years means **EUR 7 million of costs for the Commission**. Requiring MS to have only one certified ADR body per retail sector (to reduce complexity of ADR landscape), complemented by the residual cross-border and digital ADR, would help consumers in need to solve disputes in a framework where ADR is mandatory. This measure would increase competition among ADR entities in the same sector, in order to acquire the only available certification.[134] In turn, this would make ADR faster and of better quality, as well as boost the reduction of consumer detriment. If disputes were three months faster, the EUR 56 million at stake at any moment[135] would generate about EUR 280,000 of interest per year[136], i.e. **EUR 2,500,000 in 10 years at sure disposal of consumers or businesses winning the dispute**. However, some certified ADR entities that through this measure would lose the certification would certainly lose part of their revenue. As under Option C, but in a framework of mandatory ADR, replacing the ODR platform with signposting tools would **save the European Commission** about **EUR 4.4 million in 10 years and to businesses EUR 3.3 billion in 10 years**.[137] The option also includes **extending the scope to third-country traders**, but the measure is not included in this assessment of the economic impacts of Option C due to its dependence on the willingness of traders to engage in ADR disputes, which is considered low.

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

[133] EUR 33,500 x 23 extra languages on top of the language of the MS.
[134] But damage those entities who would lose certification after having invested resources to abide by high quality standards
[135] 300,000*EUR 185.
[136] At 2% interest rate, in a quarter of a year EUR 56 million generate EUR 280,000.
[137] See assessment of Option C. To this it should be added about EUR 20 of savings for new businesses operating online (80,000, Eurostat) that do not need to place the ODR link on their website anymore (in the assessment of Option C this was included in the ADR disclosure of information related savings), i.e. EUR 1,600,000 per year or EUR 14 million in 10 years.

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

- **Efficiency:** The reduction of the costs connected to the replacement of the EU ODR platform would be efficient, with EUR 3.3 billion in 10 years of business savings (as no need to disclose hyperlink to ODR platform and maintain mailbox). However, the option would generate EUR 119 million in 10 years of costs for the ADR entities, considering economies of scale and offsetting measures such as the bundling of cases, which they could pass to the industry. However, there would be significant costs for MS, the Commission (partly offset by the replacement of the EU ODR platform) and NCAs to establish new ADR entities (at national and EU-level) and re-design national ADR landscapes. **Score: 2.8/5**[138]
- **Coherence:** This option would produce different effects on legal coherence: on the one hand, by obliging Member State to restructure their domestic ADR landscape and harmonizing the rules governing ADR procedures and mandatory participation of traders in ADR, it would make consumer law more consistently enforced across the EU, thus strengthening the coherence of the consumer acquis. On the other hand, however, the measures proposed by this option would encroach on Member State's freedom to organize consumers' access to justice, which could undermine the internal coherence of their legal system. In this respect, there is uncertainty as to whether increasing the level of harmonization of the directive to such extent would be **proportionate** to the objectives pursued by the policy option. **Score: 3/5**
- **Stakeholders' view:** Although most stakeholders continue to support the minimum harmonisation approach of the Directive, which allows Member States to design their national ADR architecture according to their needs, resources and culture, certain consumer organisations advocate for mandatory ADR for traders, at least in sectors with a high-volume of disputes. The Commission's position thus far has been that ADR should remain voluntary, except when required by sector-specific or national legislation in the EU, especially because mandatory ADR could potentially conflict with constitutional norms in some Member States. Regarding the current consumer ADR landscape, consumer associations, industry representatives, online retailers, and European Consumer Centres (ECCs) all seem to agree that it requires simplification to enable consumers to navigate it.

7. HOW DO THE OPTIONS COMPARE?

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

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

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

The highest scores for each system are in bold.

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

8. PREFERRED OPTION

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

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

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

8.1. REFIT (simplification and improved efficiency)

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

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

8.2. Application of the 'one in, one out' approach

The preferred option comes with the following small annual costs:

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

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

9. HOW WILL ACTUAL IMPACTS BE MONITORED AND EVALUATED?

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

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

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

ANNEX 1: PROCEDURAL INFORMATION

1. LEAD DG, D*e*CIDE PLANNING/CWP REFERENCES

Lead DG	DG JUST
D*e*cide Planning	PLAN/2022/1534
CWP reference	CWP 2023, Annex II: REFIT initiatives, No.8

2. ORGANISATION AND TIMING

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

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

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

3. CONSULTATION OF THE RSB

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

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

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

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

4. EVIDENCE, SOURCES AND QUALITY

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

Studies commissioned or supported by the European Commission

- European Commission, Directorate-General for Justice and Consumers, Tetra Tech, VVA, CSES, *Information gathering for assisting the Commission in complying with its obligations under Article 26 ("reporting") of the ADR Directive and Article 21 ("reporting") of the ODR Regulation*, (2022).
- European Commission, Directorate-General for Justice and Consumers, Tetra Tech, VVA, CSES, *Information gathering for assisting the Commission in complying with its obligations under Article 26 ("reporting") of the ADR Directive and Article 21 ("reporting") of the ODR Regulation, Annex I, Case Study: the use of AI in ODR* and *Case Study – the use of ADR in E-commerce*, (2022).
- European Commission, Directorate-General for Justice and Consumers, LE Europe, VVA, YouGov, LinQ, *Behavioural study on disclosure of ADR information to consumers by traders and ADR entities*, (2022).

- Prof. dr. Stefaan Voet, Sofia Caruso, Anna D'Agostino, Stien Dethier, *Recommendations from academic research regarding future needs of the EU framework of the consumer Alternative Dispute Resolution (ADR)*, (JUST/2020/CONS/FW/CO03/0196), 2022, available at https://commission.europa.eu/system/files/2022-08/adr_report_final.pdf.
- Consumer Conditions Survey: Consumer at home in the single market – 2021 edition, available at https://commission.europa.eu/system/files/2021-03/ccs_ppt_120321_final.pdf

- Consumer Conditions Scoreboard - Consumers at home in the Single Market – 2019 edition, available at consumers-conditions-scoreboard-2019_pdf_en.pdf (europa.eu).

- The 2022 EU Justice Scoreboard, available at THE 2022 EU JUSTICE SCOREBOARD (europa.eu).

- Market Monitoring Survey 2019-2020, available at mms-overview-report-19-20_en.pdf (europa.eu)

Publicly available dataset/information

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

ANNEX 2: SYNOPSIS REPORT: STAKEHOLDER CONSULTATION

INTRODUCTION AND CONSULTATION STRATEGY

This report presents a comprehensive summary of all stakeholder consultation activities conducted in preparation for the Commission proposal concerning the revision of the Alternative Dispute Resolution (ADR) Directive[139] and the repeal of the Online Dispute Resolution (ODR) Regulation[140]. The report encompasses an overview of all the backward and forward-looking consultation activities carried out to gather data for the Evaluation and the back-to-back Impact Assessment accompanying the revision of the ADR Directive.

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

The stakeholders which the Commission identified as relevant are:

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

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

CONSULTATION ACTIVITIES AND TOOLS

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

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[139] Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR).
[140] Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Regulation on consumer ODR).
[141] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2019:425:FIN

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

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

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

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

OVERVIEW OF CONSULTATIONS

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

a) ADR Assembly 2021

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

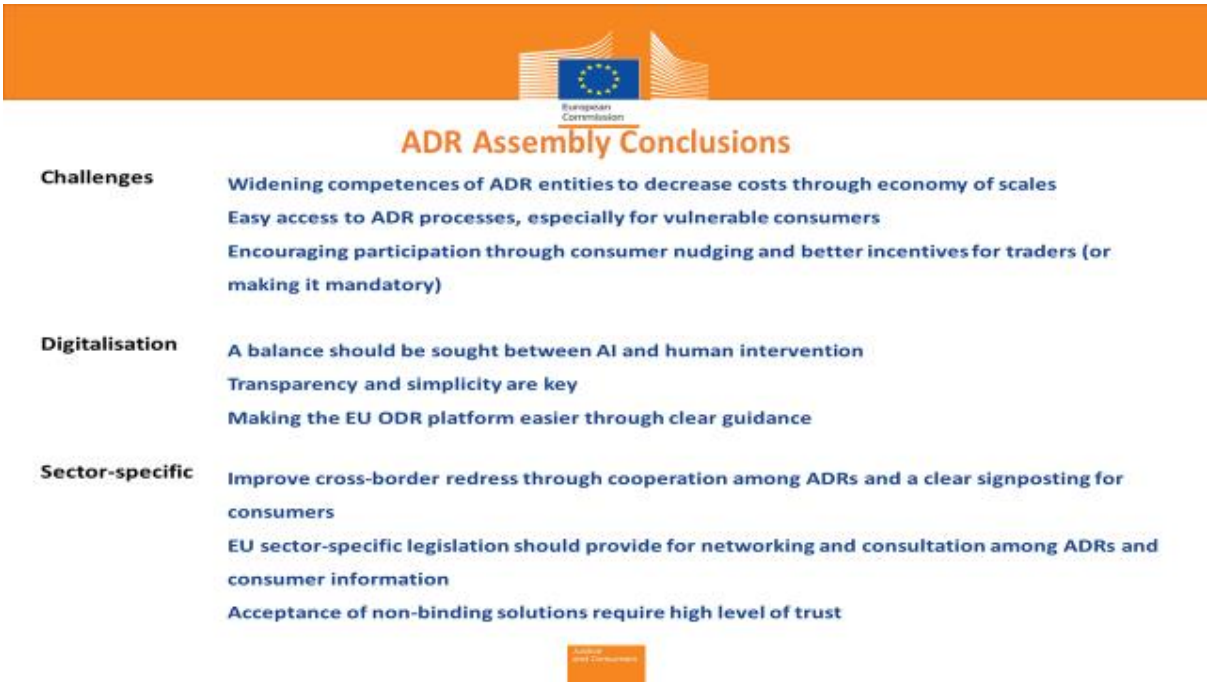
- Costs, benefits and challenges of various ADR models;

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

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

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

The slide below sums up the Assembly's conclusions:



b) ADR Workshops

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

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

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

2. *Cross-border ADR Roundtable*

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

The Commission, together with ECCs, hosted a roundtable on cross-border ADR on 21 June 2022. [145] 60 participants took part in the event, including ADR entities, ADR NCAs, ECCs, academics, consumer organizations, traders and trade associations. During the discussion:

- the ECCs presented a position paper[146] based on a survey conducted earlier in 2022, offering recommendations **on how to enhance trader participation in cross-border ADR, closing ADR coverage gaps and reinforcing the role played by ECCs in cross-border ADR**;

- The European Consumer Organisation (BEUC) presented its position paper[147], calling for the following measures: a) ensuring that NCAs conduct the necessary checks to verify **that traders accurately inform consumers about the availability of the EU ODR platform**; b) making **ADR mandatory for traders** and providing **incentives for compliance with the outcomes**; c) **improving the information available on the EU ODR platform**, including details about consumer rights in sectors generating the highest number of consumers complaints and information concerning all available redress pathways for consumers.

- Prof. Stefaan Voet from the University of Leuven presented a legal study commissioned by JUST regarding the future needs of the EU ADR framework[148]

- The external contractor carrying out the ADR data information gathering study shared preliminary conclusions of the study (yet to be published).

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

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

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

[145] Discussion papers and outcome report are available here.
[146] Available here: https://www.eccnet.eu/sites/default/files/2022-09/ECC%20Network%20-%20position%20paper%20-%20Alternative%20Dispute%20Resolution%20in%20Europe.pdf
[147] ADR for consumers: Time to move a gear up. Available here: https://www.beuc.eu/sites/default/files/publications/beuc-x-2022-062_adr_position_paper.pdf
[148] The study and an executive summary are available here.

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

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

c) Meetings organised by JUST, Unit E3

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

1. Meetings with ADR NCAs

Date	**Objectives**
13 July 2021	- Take stock of the impact of COVID-19 on ADR; - Share best practices (DE: research project on information requirements by the traders on ADR; BE: architecture of ADR in BE and the accreditation procedure used);
8 March 2022	- Reflect on the current shortcomings of the EU ADR framework; - Discuss the next steps following the Panel Discussion at the Consumer Summit 2022; - Inform competent authorities that the Commission launched 3 ADR-related studies; - Discuss ECC project on cross-border ADR; - Discuss the template for the ADR national report to be submitted by NCAs;
29 August 2022	- Inform about external study to support evaluation of ADR framework; - Announce the intention to revise the ADR Directive and repeal the ODR Regulation and that the OPC and CfE will be published by end of 2022; - Present the main areas of concern and open discussion with NCAs;

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

Date	**Objective**
12 October 2022	- Discuss the role of ECCs in view of the revision of the ADR Directive and the repeal of the ODR Regulation, especially as that many ECCs serve as ODR contact points.

3. Meetings with sector-specific ADR entities

Date	**Meeting**	**Objectives**
10 June 2020	Co-organised by JUST and MOVE in view of the voucher recommendations. Participants: qualified ADR entities dealing with travel disputes.	- Present the objectives of the Commission Recommendation on vouchers; - Enable ADRs to share their experiences and challenges they are facing in resolving disputes in the travel industry; especially voucher-related issues in view of COVID-19 pandemic.
19 November 2022	Co-organised by JUST and ENER in view of the increase of energy prices Participants: qualified ADR entities dealing with energy disputes	- Inform about the upcoming revision of the ADR Directive; - Announce policy updates addressing the energy crisis; and - Enable energy ADRs to share how they are handling the increase of consumer complaints.

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

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

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

d) External studies on ADR/ODR framework

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

1. **Information gathering study on ADR and ODR in the EU:** This study assessed the effectiveness of the ADR Directive, focusing in particular on ADR awareness, diversity in the ADR landscape across the EU (governance, coverage, timing to resolve a dispute, compulsory vs. voluntary traders participation, traders compliance with ADR outcomes), the efficiency and cost-effectiveness of ADR/ODR, the effects of external factors (e.g., COVID-19), the advantages and disadvantages of using digital tools in ADR, and the ODR platform's functionality (e.g., user-friendliness). The external contractor conducted numerous stakeholder interviews (with ADR competent authorities, ADR entities, ECCs, consumer and trader organizations, ODR contact points, etc.). To better understand the specific context, dynamics, and cross-cutting issues of the ADR/ODR framework, five case studies were selected, including three sectoral case studies covering travel, e-commerce, and financial services, and two horizontal case studies on Artificial Intelligence use in ODR and accreditation.[149]

2. **The ADR behavioural study**:[150] the study on disclosure of information to consumers by traders and ADR entities. It aimed to: a) identify optimal ways to present pre-contractual information on ADR on the traders' and ADR entities' websites by testing different disclosure options; and b) assess the use of a chatbot to assist consumers with their disputes by signposting them to a relevant ADR entity.

3. **Legal study**:[151] the study, which was conducted under the supervision of Prof. Stefaan Voet from the University of Leuven, critically analysed the current EU ADR/ODR framework from a legal point, assessing where it could be improved by drawing lessons from five jurisdictions: BE, DE, FR, IT and NL.

i. Two Public Consultations and Call for Evidence

[149] See Annex I to the ADR Data collection study.
[150] link
[151] See footnote 10 above

Between 4 April and 27 June 2022, the Commission ran a backward-looking public consultation[152] through the" Have your Say" website to collect views on the functioning of the ADR/ODR framework from the general public as well as from relevant stakeholders, including consumer organisations, trade associations, and ADR entities. The outcome fed into the Evaluation of the ADR Directive. Besides standard profiling questions, the OPC comprised several questions aimed at gathering information on respondent's awareness and opinion on the usefuleness of ADR. The results indicated that:

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

On 28 September 2022, the Commission launched in parallel a **forward-looking public consultation** and a **Call for Evidence[153]** to support the impact assessment for the revision of the ADR/ODR framework.[154] 111 responses and 23[155] reponses were submitted to the OPC and the CfE respectively. The summary report[156] of the OPC was published on the Have your Say website on 16 February.

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

The salient points were the following:

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[152] Outcome summary report is available here.

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

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

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

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

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

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

CONCLUSIONS AND CONSIDERATION OF THE FEEDBACK BY THE COMMISSION

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

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

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

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

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

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

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

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

ANNEX 3: WHO IS AFFECTED AND HOW?

1. Practical implications of the initiative

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

2. Summary of costs and benefits

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

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

Total	Direct adjustment costs				EUR 36 million		
Total	Direct administrative costs				EUR 2.6 million		

3. Relevant sustainable development goals

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

ANNEX 4: ANALYTICAL METHODS

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

ASSESSMENT OF THE OPTIONS

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

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

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

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

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

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

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

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

Option B **Option A[159] + Procedural and geographical scope revision**	Policy Option B aims to amend the existing EU legal framework governing ADR by addressing the shortcomings described under section 2 through the inclusion of new provisions that would complement the non-legislative initiatives described under Policy Option A). **Calculation on number of disputes**: 5% third-country traders dispute[160]	**Consumers/Citizens** Reduced detriment of up to about EUR 1.5 million every year,[161] i.e. up to **EUR 13 million in 10 years** because of the extra disputes. Consumers would gain time consulting the database on the identities of retailers who do not engage in ADR, knowing which are their chances of engaging into an ADR with the business they are having a problem with. On top of that, they would also know which businesses are more risky to do trade	**Consumers/Citizens** N/A	**All Stakeholders** N/A	**Consumers/Citizens** By clarifying that ADR procedures can be used also to resolve disputes with traders established outside of the EU, Policy Option B would provide consumers with an additional avenue to obtain redress, thereby strengthening their right to an effective remedy pursuant to **Article 47** of the CFREU.

[159] Impacts of Option A also apply for Option B.
[160] ECC data mentioned in the Information gathering study.
[161] 9,000*90% (UK figure on likelihood for consumer to reach an amicable settlement https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/698442/Final_report_-_Resolving_consumer_disputes.pdf)
*EUR 185 (average value of an ADR dispute, proxy data from EU ODR Platform). In an ADR, as the solution is amicable, the solution offered to consumers would very likely be smaller than the total, hence the EUR 185 per dispute are to be considered a maximum value.

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

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

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

[162] https://ec.europa.eu/eurostat/web/products-eurostat-news/w/ddn-20221219-3. Annual average salaries in the EU.
[163] EUR 300 per dispute, see problem definition. Discount factor for actualised value: 3%.

	Description of the measure	Economic Impacts	Social Impacts	Environmental Impacts	Fundamental Rights
Option C[164] **Material scope amendments and new business obligations**	Policy Option C) seeks to address the problems outlined above by amending a number provisions of the current Directive and adding new obligations for traders. It also assigns new responsibilities to entities that do not currently play a role under the Directive. **Calculation on number of disputes:** This option would make the number	**Consumers/Citizens** If **consumers** would win 90% of the times (with businesses accepting the result of the ADR procedure), this would **reduce detriment** of about EUR 33 million every year,[172] i.e. **EUR 290 million in 10 years**. The behavioural study conducted on ADR information requirements[173] showed that the currently required ODR link addition to generic information mentioning ADR as a redress solution does	**Consumers/Citizens** The certainty to rapidly obtain an answer to their complaints brought to a proper ADR would reduce drastically the stress of consumers who would better assess the feasibility of the various concrete possibilities to solve their issue. The clarified and expanded scope of application of the Directive would also diminish stress for those disputes which currently can only have their solution in court. Replacing the	**All Stakeholders** Limiting reporting obligations would have a limited positive impact on the carbon footprint of printing such reports. Self-certification mechanisms would also avoid the need to prepare and print large reports for official certification. Expanding the scope of the Directive to include extra-	**Consumers/Citizens** The widened material and geographical scope of the Directive would ensure that consumers have access to private redress for a broader range of disputes, thereby reinforcing their right to an effective remedy as laid down by **Article 47 of the CFREU**. The measures aimed at ensuring through a self-certification mechanism that PODR systems adhere to high-quality standards would enhance consumer

[164] The option also includes the extension of the scope to third-country traders: the numbers are the ones assessed within option B and they are not included here are those numbers strongly depend from the willingness of third-country traders to engage into an ADR dispute and are the most optimistic scenario.
[172] 200,000*90%*EUR 185.
[173] Behavioural study on disclosure of ADR information to consumers by traders and ADR entities.

	of potential ADR disputes increase by about 4.5% as a direct consequence of the clarification that the material scope of the Directive should cover disputes not explicitly covered in contracts and other relevant consumer law provisions.[165] 4.5% of 2,250,000 consumers seeking redress potentially with ADR[166] = 100,000 new eligible disputes.[167] Baseline = 300,000 eligible disputes, Option C eligible disputes =	not provide any positive impact on consumer's intention to use ADR as a solution. Hence, consumers would not suffer any detriment with this information removal. The behavioural study also says that general information on ADR is beneficial. However, consumers are in most cases misled by those mandatory statements by businesses, because businesses need to insert the information in their terms and conditions but they do not have to participate	ODR Platform would have a negative social impact on those jobs as MS contact points connected to its implementation (about 50 FTEs throughout the EU) but this is offset by positive social impact on jobs created within the whole ECC framework (which could be of similar magnitude and even re-absorbing the same staff).	contractual disputes would allow consumers to seek redress for damages resulting from unfair commercial practices, including those related to misleading green claims. The possibility of obtaining redress against greenwashing through ADR would reinforce the efforts of public consumer protection authorities and contribute to achieving the	protection (**Article 38 CFREU**).

[165] ECC data (see Chapter 3 below in this Annex) on 2022 EU complaints' categorization used as a proxy for general ADR disputes. Complaints on general information request, lack of confirmation, other misleading actions or omissions, refusal to sell/supply product or discrimination, and unfair and aggressive commercial practices, are considered as the extension of the scope under this policy measure and together account for 4.47% of all complaints.
[166] See problem definition, calculated through data of the Consumer Conditions Survey.
[167] Assumed eligible. One consumer is also assumed to have maximum one dispute every year.

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

[168] The ratio 180,000/300,000 applying now to 400,000.
[169] 96,000 as seen in the problem definition, i.e. 32% of total, which out of 400,000 is 128,000. It is unknown how many unanswered notifications are from SMEs and how many from large businesses.

	potential disputes about 77,000 every year would become real disputes[170], mostly linked to businesses previously unaware of the potential of ADR, for **a total of nearly 200,000 new disputes under this policy option**[171] and **380,000 disputes in total.**	particular ADR entity (64%[175] of the total). It is known from the Impact Assessment linked to the current ADR Directive[176] that the inflation adjusted costs of providing information to consumers are about EUR 310 per business.[177] These are mostly one-off. Every year, for newly established businesses who do not adhere to an ADR entity,[178] the total savings would			that businesses are not obliged by the Directive to participate in ADR ensures that their freedom to conduct business is observed.

[174] 3% discount factor applies for actualising values.
[170] Applying the same logic that approximately 60% of businesses, if solicited by ECCs, normally find an agreement with the consumers. Hence 60% of businesses who are solicited to reply would reply positively.
[171] 300,000-180,000 in the baseline +77,000.
[175] Consumer Conditions Scoreboard - Consumers at home in the Single Market, 2019, consumers-conditions-scoreboard-2019_pdf_en.pdf (europa.eu).
[176] Impact Assessment accompanying the document Proposal for a Directive of the European Parliament and of the Council on Alternative Dispute Resolution for consumer disputes (Directive on consumer ADR) and Proposal for a Regulation of the European Parliament and of the Council on Online Dispute Resolution for consumer disputes (Regulation on consumer ODR) {COM(2011) 793 final} {SEC(2011) 1409 final}.
[177] EUR 254 x 1.2217 as cumulative inflation between 2012 and 2023 (in2013dollars.com/Europe).
[178] Eurostat: 500,000 new wholesalers and retailers every year in the EU x 64% = 320,000.

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

[179] 320,000 x EUR 310.

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

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

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

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

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

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

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

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

[183] EUR 600,000 every year saved if the ODR platform stops to be maintained, minus EUR 100,000 every year for other developed solutions to redirect consumers to the right ADR entity (e.g. artificial intelligence-powered lawbots/chatbots).
[184] EUR 300 per dispute, see problem definition.

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

[185] This is a conservative assumption related to potential savings.
[186] 10%*380,000 = 38,000 disputes* EUR 300.

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

	Description of the measure	Economic Impacts	Social Impacts	Environmental Impacts	Fundamental Rights
Option D[187] **Architectural changes and increased level of harmonization**	Policy option D is the most ambitious among the options considered because it seeks	**Consumers/Citizens** If consumers win 90% of the times (with businesses accepting the result of the ADR	**Consumers/Citizens** Stress for consumers might increase because mandating ADR usage across the	**All Stakeholders** N/A	**Consumers/Citizens** The architectural changes proposed by this policy option would only affect

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

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

[188] There is no information on the size of the businesses more involved with ADR disputes, but it is expected that a large number of the 300,000 eligible disputes is with large businesses.
[189] 120,000*90%*EUR 185.

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

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

[190] 300,000*EUR 185.
[191] At 2% interest rate, in a quarter of a year EUR 56 million generate EUR 280,000.

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

[192] EUR 100 x 120,000 disputes.

		certification but an actual certification process with audits. Hence, as in Option C total costs in 10 years for large businesses to comply would amount to EUR 97 million, but in addition they would have to file the reports, for a total of 0.5 FTEs each business the first time and 0.1 FTE every year to follow the file (at EUR 33.500 per FTE[193]), i.e. EUR 5,000,000 in 10 years.[194] The **total cost for large business would then be EUR 102 million in 10 years.** Obliging MS to have only one certified			

[193] https://ec.europa.eu/eurostat/web/products-eurostat-news/w/ddn-20221219-3. Annual average salaries in the EU.
[194] EUR 33,500*0,5 FTEs*110 businesses = EUR 1,842,500, and EUR 33,500*0,1 FTEs*110 businesses for 10 years (3% discount rate) = EUR 3,237,000. Total = EUR 5 million.

		ADR body per retail sector, complemented by the residual cross-border and digital ADR, would also act to simplify the flow of consumers in need to solve disputes in a framework where ADR is mandatory. This measure would increase competition among ADR entities in the same sector, in order to acquire the only available certification. In turn, this would make ADR faster and of a better quality and would boost the reduction of consumer detriment. If disputes were three months faster, the EUR 56 million at stake at any moment[195] would generate about EUR			

[195] 300,000*EUR 185.

		280,000 of interest per year[196], i.e. **EUR 2,500,000 in 10 years at sure disposal of consumers or businesses winning the dispute**. As in Option C, and as now ADR is mandatory, replacing the ODR platform with signposting tools needs to be done and will **save businesses EUR 3.3 billion in 10 years**.[197] Competitiveness of EU businesses will be impacted positively by this option, because the savings can be used to boost the attractiveness of their			

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

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

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

		prices, and possibly foster innovation.			
		Commission About asking MS to designate a residual entity in charge of digital disputes and the Commission one for ADR cross-border complaints including disputes with non-EU traders, even if automatic translation can be provided, the supervision of at least 1 FTE per language is envisaged. That would mean about EUR 770,500 per year[198], which in 10 years means **EUR 7 million of costs for the Commission**. As in Option C, and as now ADR is	**Commission** N/A		**Commission** N/A

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

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

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

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

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

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

[201] EUR 33,500 x 2 FTEs x 27 MS.

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

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

COMPARISON OF THE OPTIONS

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

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

Calculation of the efficiency score for all policy options:

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

The standardised efficiency score for the MCA is calculated as (5 x Net benefit/Best net benefit) and scores are as follows:

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

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

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

ECC DATA ON COMPLAINTS

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

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

EU ODR PLATFORM DATA ON THE AVERAGE CLAIM

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

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

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

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

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

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

SWEEP ON PODR

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

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

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

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

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

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

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

ANNEX 5: COMPETITIVENESS CHECK

1. Overview of impacts on competitiveness

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

2. Synthetic assessment

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

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

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

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

ANNEX 6: PERFORMANCE OF THE ODR PLATFORM

INTRODUCTION

The ODR Regulation, adopted in 2013 to complement the ADR Directive, established the European Online Dispute Resolution Platform ("ODR platform") to facilitate access to ADR for disputes stemming from online purchases. Its Implementing Regulation[204] established the technical modalities for the functioning of the platform and the network of the ODR contact points.

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

The ODR platform's website is one of the most visited sites of the European Commission (2,5 million visits in 2022)[205]. Even if less than one percent of the visitors actually use the complaint form, the platform, however, amassed 180 thousand[206] complaints since its launch in 2016, with additional 87 thousand requests for traders to settle directly (not involving ADR).[207] 80-85% of complaints, however, go unanswered on the platform, with only about of 1% of the complaints (i.e about 150 cases) resulting in an ADR outcome.[208] This low success rate has persisted over the years, regardless of the technical and design improvements on the platform, or information campaigns.[209]

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

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

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

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

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

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

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

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

* Years where UK consumers, traders and ADR entities were still using the platform. While Brexit affected the number of submissions, it did not have a noticeable change on the proportion of complaints reaching ADR.
** Direct talks (consumers and traders exchanging messages on the platform directly, without involving ADR) were offered as of July 2019. More details are available later in this Annex.

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

THE ODR REGULATION

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

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

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

[210] See Article 10(d) ODR Regulation – the ADR entities, however, are not obliged to use the platform's case handling tool apart from communication the decision on admissibility and, if applicable, on the outcome of the dispute.
[211] Some traders formally comply with the link obligation, but not the email obligation, or warn consumers that they will not respond to complaints coming from the ODR platform.

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

However, while the ADR directive empowers consumers to submit a complaint to an ADR entity[213], the ODR Regulation's approach is that a consumer's complaint only reaches the ADR stage if, and only if, the trader explicitly agrees and proposes an ADR body[214]. In the absence of such an agreement, the platform automatically closes the case in 30 days after submission of the complaint by the consumer. Therefore:

(1) Only 2% of traders agree to use an ADR when asked through the platform;

(2) Use of the ODR platform thus creates an unnecessary additional step for consumers compared to them submitting a complaint to the ADR entity directly, with consumers losing time;[215]

(3) The complaint can only reach the trader if the consumer uses the proper contact email that traders are to provide for the purpose of reply to the ODR platform emails. However, traders' compliance with the obligation to signpost the link and the e-mail has been below 30%[216]. This means that the platform effectively cannot be used when the consumer does not know how the email of the trader behind the website.[217]

(4) The use of the ODR platform is voluntary even when the trader is committed or obliged to use ADR. Indeed, while 4 to 9% (depending on the year) of consumers indicated in the complaint form that, to their knowledge, the trader was obliged or committed to use ADR, the actual rate of transfer to an ADR was significantly lower (2% for most years, and the maximum of 4% for 2018).

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

[212] The Implementing Regulation provided for an electronic notification form, which allows Member States to notify the ADR entities to the platform directly. Once the ADR entities nominate at least one user for the purposes of handling complaints arriving via the platform, and the Commission makes the necessary translations, the entities are added to the list semi-automatically.
[213] See, for example, recitals 24-25, or Article 1 of the ADR Directive.
[214] Article 9(3) of the ODR Regulation. While the trader should, in principle, decide whether to propose ADR or not within 10 days, there are no consequences for failure to do so, as the process is voluntary.
[215] Especially if the trader is not aware which ADR they should use, and ADR subsequently rejects the case.
[216] Webscraping exercise and sweep on telecommunications and digital services, both 2018.
[217] The consumers themselves may make errors, i.e. write the wrong email address, which may mean that the complaint would not even make it to the right department within 30 days.

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

(5) Automatic closure of the complaint is a constant source of frustration for the consumers who come to the platform[218]. Indeed, most contact points report that 30 days closure has remained the most frequent cause for consumers to contact them, and even if the voluntary nature of the platform is well explained and the consumers are notified of the other means of redress, the consumers do not understand why their case was simply closed without information from the trader or an ADR body.

ODR PLATFORM AS DIGITAL SERVICE INFRASTRUCTURE

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

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

The Commission's efforts to improve the platform are based on the feedback of the users, the national contact points[219], and other stakeholders:

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

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

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

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

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

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

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

Some of these issues could have been addressed with the comprehensive overhaul of the ODR platform.[220] However, this would entail additional investment upward 1 MEUR[221], while maintenance of the ODR platform is already costing more than 0,5 MEUR per year just for technical maintenance, not counting the staff of the Commission or translation costs. Given that neither information campaigns nor design improvements had a significant and durable impact on the traders' engagement with ADR, the likelihood of a positive change with a revamp only is very low.

THE VALUE OF THE ODR PLATFORM

Consumers land on the ODR platform because they have a problem which is likely to have been already dismissed by the trader[222]. The ODR platform, aside from its complaint function, is also an information hub where the consumer learns about their rights and redress options, can access the contact points and ADR entities. In this way, the existence of the platform had value beyond the ODR Regulation. However, and with a minimal cost, this value could have been achieved by a simple website offering information, signposting tools and access to a national advisor.

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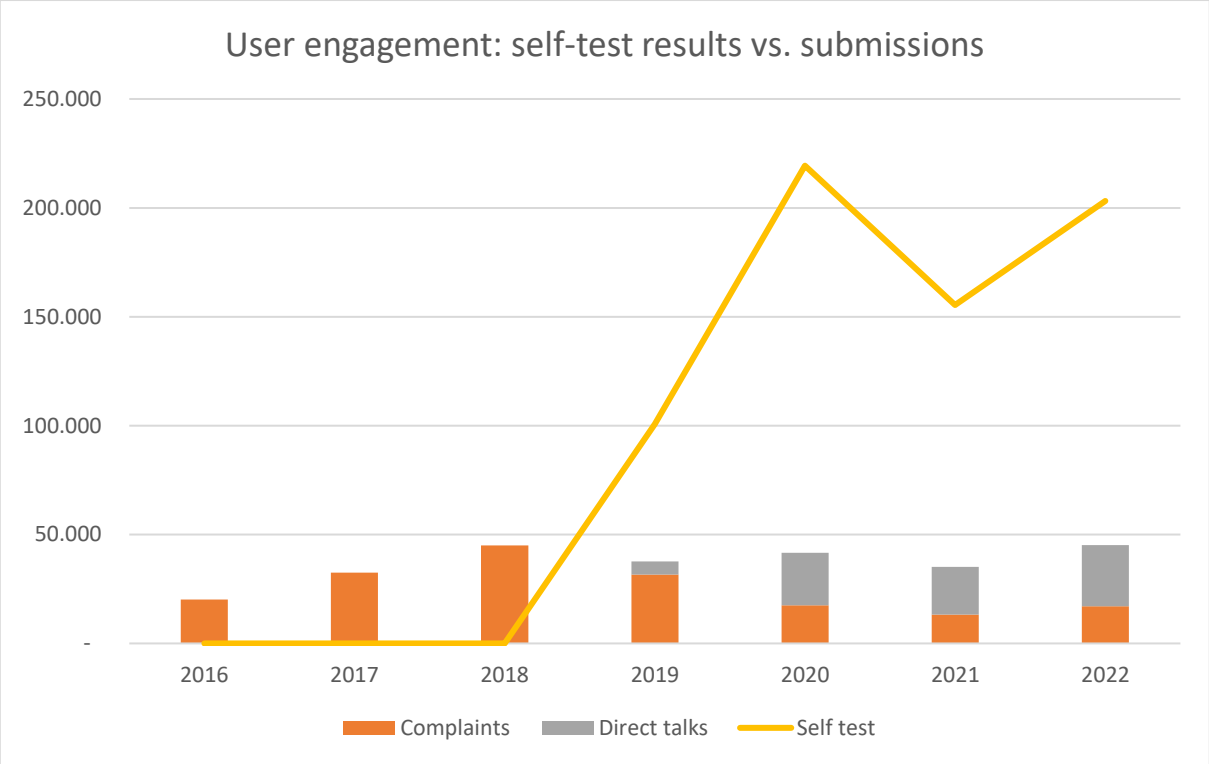
[220] In 2021, DG JUST submitted a Project Initiation Request for the revamped ODR platform to the Information Technology and Cybersecurity Board. The request included externalisation of the platform technical management and was rejected by ITCB as, in ITCB view, there was not enough evidence to support externalisation.
[221] Estimated by DG JUST in 2021 prices
[222] See earlier footnote: 95% consumers already contacted the trader before they submit their case to the ODR platform

The self-test tool has been one of the most successful and appreciated improvements: it drastically[223] increased the level of engagement with the platform, and assisted consumers to understand whether their case was in the scope of the platform and about the other means to resolve their disputes (going to the ADR directly, contacting the trader first, approaching an ECC).



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

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

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

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

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

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

Traders' unwillingness to use an ADR process is unlikely to be modified by information campaigns[226], technical or design improvements as it is the process itself that they reject and in fact, in all other situations the process is that it is the ADR body that contacts the trader, as a neutral 3rd party; following a complaint that the ADR received.

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

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

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

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

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

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

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

No	11%	56%
I don’t know	15%	33%

Source: exit survey of the ODR platform.

CONCLUSION

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