

Cross-border Alternative Dispute Resolution (ADR) Roundtable

Outcome report

Brussels, 21 June 2022

In a well-functioning digital single market, it is paramount to have an effective cross-border ADR mechanism to ensure that consumers are in a position to obtain fair redress in case of problems. This is important because current market trends show that digital markets are more and more influential: E-commerce represents up to 25% of consumers' expenditure in the EU and 50% of annual advertising spending by businesses is taking place online.

Cross-border consumer disputes are however complex to resolve due to lack of clarity about the applicable law, linguistic challenges, lack of awareness among consumers on where to resort to resolve a dispute, lack of resources and expertise by ADR entities, etc. Furthermore, the complexity of disputes has evolved with the surge of e-commerce (and the role of international players and platforms), growing importance of intermediaries and traders from third countries. The European Alternative Dispute Resolution (ADR) legal framework, spelt out in the [ADR directive](#) aims at providing an affordable, simple and fair mechanism to EU consumers to resolve their disputes, domestic and cross-border, out-of-court, however, this mechanism only manages to catch a fraction of all potential cross-border disputes as it is not well-adapted to those specific challenges.

This Roundtable, co-organised by the Commission, the [European Consumer Centres Network](#) (ECC-Net) with participation of eCommerce Europe, is one in a series of events feeding into the EU reflection on how to simplify cross-border ADR. Around 60 participants, including ADR entities, competent authorities, ECCs, trader and consumer organisations, academics and Commission officials attended the event and contributed actively to 3 break-out sessions.

It built on the September 2021 [online ADR assembly](#), where the Commission had invited the main actors (ADR practitioners, competent authorities, European Consumer Centres) and on the February 2022 [Consumer Summit](#) workshop on the use of digital tools to support consumers to enforce their rights. In these events, participants expressed the need for the ADR system to better address today's redress needs, notably in the digital markets..

Conclusions: Break-Out Sessions

I. Digitalisation for cross-border disputes led by Maike Jansen, Ecommerce Europe

Digitalisation could support all stakeholders involved in the ADR/ODR mechanism and drive a more efficient complaint-handling framework in cross-border settings. Consumer awareness of the instruments could be raised by launching EU-wide online campaigns and digital tools to assist consumers in assessing their own disputes.

Digital tools, including AI-powered solutions could be useful and cost-effective for ADR entities. As of now, their deployment is still very scattered, also due to the lack of a European steer and adequate infrastructure. AI-based solutions might be particularly suited for applications in case management systems (24-hour system for consumers to file their cases online, checks on admissibility of claims, case-handling itself, communication with parties, etc.) and classification of cases leading towards more consistency to resolve similar disputes and faster approach. Using AI tools could help redirecting and signposting consumers towards a competent ADR body depending on the nature of the dispute. Despite incentivising the use of AI applications, it is paramount that the empathy and human element is kept; as well as combining ADR with more traditional support tools (e.g. email, helpline) to ensure that consumers without digital skills have access to ADR.

The current EU investment in digitalisation and available funding could also be better exploited to boost small companies' IT capacities and access (incentives to comply with the ADR/ODR rulebook). This might lower compliance costs incurred by traders in ADR procedures and foster their involvement in line with the quality requirements of the ADR directive.

Given the very low use of the European ODR platform managed by the Commission to resolve ADR disputes, participants urged the Commission to consider revising its functionalities from a rarely used match-making tool to a platform providing insights for consumers and traders on their redress needs and possibilities. Notably in countries where numerous ADR entities exist, the platform could function as a gateway assisting consumers and traders find the best-suited ADR entity.

The ECC-Net could strengthen its contacts with ADR entities and traders through more frequent and integrated cooperation which could be facilitated by digital solutions and mechanisms.

II. Simplifying Collective ADR in a cross-border context, led by Prof. Stefaan Voet

Collective ADR is still little known, hence the number of collective ADR disputes is fairly limited. There is also no, or limited, legal framework allowing for (institutionalized) collective ADR. Most participants were open to national collective ADR (e.g. a travel dispute filed by a group of 100 students was resolved successfully through a consumer organisation) however seemed sceptical about cross-border cases given the complexities (e.g. linguistic issues, procedures, etc). The EU ODR platform could help better navigate the ADR landscape and facilitate multiple applications, but this would require considerable developments and costs.

Good practices were mentioned, although these mainly focus on small scale collective cases (i.e. not large scale cases with hundreds/thousands of consumers):

- the appointment of a 'group leader' (e.g. a lead passenger in case of a group of travelers) and the use of a mandate/proxy (given to this leader by the rest of the group);
- gentlemen's agreements with traders regarding the management of similar cases (e.g. opening one case file, using data of all consumers, scheduling identical or similar cases on the same day in case of ADR adjudication, etc) to streamline the process;
- the use of test cases before ADR entities or even before courts impacting the future collective ADR disputes. The publication of ADR decisions/outcomes can resolve future identical or similar cases and enhance legal certainty.

Participants underlined the need to keep the following procedural safeguards: confidentiality of consumers in collective ADR cases, the explicit consent of consumers (*i.e.* opt-in), sufficient resources and manpower among ADR entities and the possibility of setting up an ADR entity to deal exclusively with collective ADR. Another (perhaps more controversial) technique is allowing ADR entities to ask a prejudicial question to a court. If the ADR process is blocked or slowed down by a legal (disputed) issue, ADR entities (possibly jointly with the trader) could go to court. In light of that decision the ADR process can continue. This idea was received positively, although it was stressed that a robust and strict procedural framework would be needed.

Most participants expressed the will that the ADR Directive should clarify collective ADR whilst the process should be left to the Member States to determine.

III. Cross-border ADR to enforce the Single Market Rules, led by Lars Arent and Margarita Synanidi (ECC-Net)

At first an introductory discussion took place about the obstacles faced in cross-border ADR based on the findings of an internal survey conducted by ECC-Net (i.e. lack of trader engagement in ADR, ADR coverage issues, language barriers, etc). As a reaction to the said challenges, participants suggested the following:

- mandatory trader participation or strong incentives for traders to participate
- increasing the use of e-translation tools; or use English as a universal language
- setting up of sectorial pan-European ADR Networks
- more guidance on accreditation and monitoring as well as supervision of ADR entities
- improving the collection and structure of data and sharing of best practices
- improving online interface of platforms
- clear information for consumers about the different pathways to solve their disputes to simplify the process for them (*e.g.* awareness campaigns)

The ECC-Net considers strengthening its role in the ADR landscape:

- on behalf of consumers that have difficulties navigating in the ADR system of another country and,
- to the benefit of ADRs when facing issues with language or applicable law when asked to resolve cross-border ADR disputes.

Next Steps

In September the Commission will publish its Work Programme for 2023. Whether the ADR directive revision will be included or not is still to be seen. The outcome of this Roundtable will be analysed for the joint ADR/ODR application report the Commission will adopt in 2023 in line with Article 26 ADR directive and Article 21 ODR regulation.

Additional Information

The discussion papers for the break-out sessions are found [here](#).

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