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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)**

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Disclaimer

This IA report commits only the Commission's services involved in its preparation. The text is prepared as a basis for comment and does not prejudge the final form of any decision to be taken by the Commission

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1. INTRODUCTION

Consumer protection legislation at EU and Member States' level has been significantly strengthened in the past decades. However, when their rights are violated European consumers do not always obtain effective redress.

This is because consumers believe court proceedings to be expensive, time-consuming and burdensome. Cumbersome and ineffective proceedings and their uncertain outcome discourage consumers from even trying to seek redress. In addition, consumers are not always aware of what their rights entail in concrete terms and therefore do not seek compensation when they are entitled to it.

The lack of effective redress poses particular challenges in cross-border transactions. Naturally wary of venturing into an unfamiliar commercial environment, consumers are especially worried about something going wrong with a purchase made in another Member State. They are concerned about differences in legislation between Member States, language barriers, potentially higher costs and unfamiliar procedural rules in dispute resolution in another Member State. Consumers often give up their cases simply because they do not know where to address their dispute in another Member State. Uncertainty about securing redress affects consumers' confidence in shopping across borders and dissuades them from taking advantage of the Single Market.

Consumers' determination to seek redress depends largely on the value of the claim. When the loss is significant consumers are more likely to take the necessary steps to obtain compensation, including through judicial means. Small consumer claims rarely reach courts¹. Estimates based on surveys show that one in five consumers in the EU encounters problems when purchasing goods or services. The loss reported by European consumers due to these problems is estimated at 0.4% of Europe's GDP². Only a small fraction of them seeks and obtains effective redress.

The expansion of certain retail sectors with an inherent cross-border dimension, such as retail travel services or car rentals, entails a growing potential of cross-border disputes, which are more complex to solve for consumers and for businesses than domestic disputes.

With the development of e-commerce, the scope and size of markets in which business and consumers operate has grown significantly and regardless of national borders. Consumers, however, perceive it as risky because it may generate disputes which are not easily resolved due to the virtual character of transaction.

The lack of effective redress resulting from cross-border online transactions has adverse consequences not only for consumers but also for businesses. In particular, small and medium size enterprises (SMEs) are deterred from acquiring the administrative capacity needed to deal with disputes with consumers residing in another Member State. The lack of confidence

¹ 39% of European consumers did not go to court after a problem they encountered because the sums involved were too small or the procedure would be too expensive with respect to the sum involved. Eurobarometer 342, "Consumer Empowerment", TNS Opinion, 2011, available at: http://ec.europa.eu/public_opinion/archives/ebs/ebs_342_en.pdf

² See Annex II for the calculation method of data used in the text.

among consumers and businesses that they will be able to resolve any problems which occur in cross border online transactions has a negative impact on the internal market.

Concerning judicial redress, a number of instruments have been put in place and some initiatives are ongoing to explore the possibility of future instruments to enable consumers to solve their disputes and obtain compensation (i.e. ongoing work on collective redress, judicial mediation and small claims). Other existing or planned EU initiatives aim at promoting the interests, health and safety of consumers in the internal market, such as European Contract Law, Consumer Rights, Product Safety. However, while these instruments govern the substantive rights and obligations of the consumer and trader, they do not encompass means of resolving a dispute when this relationship goes wrong, nor do they aim at providing consumers with compensation in an easily accessible and inexpensive way. An EU system of ADR (alongside an EU system of judicial redress) is needed to give full effect to EU consumer and contract legislation across the internal market.

In addition to traditional dispute resolution through judicial means, consumers and businesses in some Member States can refer their claims to the so-called **Alternative Dispute Resolution** ("ADR") schemes. The term alternative dispute resolution covers non-judicial procedures, such as conciliation, mediation, arbitration, complaints board. For the purposes of this Impact Assessment (IA), ADR refers to the resolution of disputes between consumers and traders (B2C) linked to the sale of goods and provision of services by traders. ADR schemes aim to settle disputes arising between parties through the intervention of an entity (e.g. conciliator, mediator, ombudsman, complaints board etc). ADR does not cover the resolution of disputes by internal complaint handling systems run by businesses. ADR schemes aimed at resolving disputes between consumers and traders via an online procedure are called **Online Dispute Resolution** schemes ("ODR") and could be an effective tool, particularly for solving disputes linked to online transactions. However, ODR is currently not sufficiently developed³.

ADR schemes might have a general competence or cover specific retail market sectors. They can be public or financed through private sector contributions or both. ADR schemes are usually not mandatory for the parties and the referral of a dispute to ADR depends on their consent. ADR can propose or impose a solution or merely bring the parties together to assist them in finding a solution.

Studies conducted as well as the reported experience of consumers and businesses demonstrate that ADR can offer simple, inexpensive and swift resolution of disputes between consumers and businesses⁴, in particular when small and medium amounts are at stake.

However, the diversity and uneven geographical and sectoral coverage in ADR/ODR schemes prevent consumers and business from fully exploiting their potential. ADR schemes are not yet developed in some Member States. In addition, the existing ADR schemes cover at times only part of the territory or are competent for specific sectors in the retail market. The

³ ODR can also exist for disputes between traders (B2B) which, as ADR, are not covered by this Impact Assessment. An example of B2B ODR is a service of the Czech Arbitration Court (www.adr.eu) which helps brand and trade mark owners, domain name registrants and registration companies all over the world to resolve conflicts through an online procedure.

⁴ Study on the use of Alternative Dispute Resolution in the European Union, Civic Consulting of the Consumer Policy Evaluation Consortium (CPEC), 2009, http://www.cc.cec/home/dgserv/sg/evaluation/pages/eims_en.htm (executive summary in Annex I).

grass root development of ADR schemes in some Member States has generated complexity, which has an adverse impact on their efficiency and use by consumers and businesses. In fact, consumers and businesses are often not aware of the possibility of referring their disputes to an existing ADR or they are not certain whether their dispute would be eligible under a given ADR scheme.

The need to improve access to redress for consumers through alternative dispute resolution schemes calls for a reflection at EU level. The divergence in national policies on ADR schemes (or lack thereof) shows that unilateral action by Member States does not lead to a satisfactory solution to consumers and businesses. The lack of coherent and efficient ADR systems in the Member States has also an impact on the possibility for consumers to rely on these ADR systems in cross-border and online disputes, for which access to ADR/ODR procedures remains very limited. The cross-border aspects of the identified problems in ADR and ODR are directly linked with the national situation. Improving cross-border ADR relies on improving national ADR.

Studies have demonstrated that potential savings for European consumers are estimated around €20 billion if they can refer their dispute to an ADR scheme⁵, while businesses can save up to €3 billion when using ADR instead of going to court⁶.

The purpose of this IA is to analyse possible ways to enhance the availability and effectiveness of alternative means of redress in domestic and cross border disputes, including e-commerce, as means to strengthen consumers and businesses' confidence in the internal market. This analysis will take into account the various levels of development of ADR in the Member States as well as the different types of ADR schemes that have been established at national level.

Boosting the confidence of market actors, businesses and citizens alike, is essential to improve Europe's competitiveness. A well functioning Single Market encompassing 500 million consumers, whose spending accounts for 56% of EU GDP, and more than 21 million businesses is the basis for delivering smart, sustainable and inclusive growth, in line with the objectives of the Europe 2020 Strategy.

2. POLICY BACKGROUND, STAKEHOLDER CONSULTATION AND PROCEDURAL ASPECTS

2.1. Policy Background

The forthcoming legislative initiative on ADR in the EU is one of the 40 strategic initiatives of the Commission Work Programme for 2011⁷.

An initiative on ADR was identified by the Single Market Act (SMA), adopted in April 2011, as one of the twelve levers to boost growth and strengthen confidence⁸. Its purpose is *“to establish simple, fast and affordable out-of-court settlement procedures for consumers and protect relations between businesses and their customers. This action will also include an electronic commerce dimension”*.

⁵ See Annex II

⁶ See Annex XII

⁷ http://ec.europa.eu/atwork/programmes/docs/cwp2011_en.pdf

⁸ Commission Communication "Single Market Act" COM (2011) 206, p.9.

The Monti report of 2010 on the new strategy for the internal market⁹ emphasised the need to place consumers and consumer welfare at the centre of the next stage of the Single Market, notably through enhanced means of redress.

The flagship initiative "Digital Agenda for Europe"¹⁰ announced an EU strategy to improve ADR systems and indicated that the Commission will "*propose an EU-wide online redress tool for e-commerce*" in order to build up consumers' and businesses' confidence in the digital market.

The March 2011 European Council invited the Parliament and the Council to adopt, by the end of 2012, this first set of priority measures to bring a new impetus to the Single Market¹¹.

Against this background, the Competitiveness Council highlighted the importance of *a well functioning electronic commerce [...] and agreed that consumer alternative disputes resolution schemes can offer low cost, simple and quick redress for both consumers and traders while at the same time being a useful tool for maintaining business reputation and strengthening consumers' confidence*".¹²

In April 2011, the European Parliament adopted three Resolutions on the SMA. In particular, it supported "*the Commission's initiatives to further improve the use of alternative dispute resolution (ADR)*". The European Parliament also underlined "*the importance of a quick adoption of the legislative proposal expected for end 2011*"¹³.

2.2. Stakeholder Consultation and research on ADR

In January 2011, the Commission services launched a public consultation on the use of ADR as a means to resolve disputes related to commercial transactions and practices in the European Union¹⁴. The consultation paper outlined the state-of-play on ADR in the EU and raised questions about consumer and businesses awareness of ADR, the involvement of traders in ADR procedures, ADR/ODR coverage and funding of ADR.

More than 200 replies were received from stakeholders and public authorities. The public consultation revealed a strong support for ADR schemes as an efficient alternative to in-court dispute resolution for consumers. Respondents agreed unanimously on the need to develop further ADR schemes and the vast majority of them also supported action at EU level. Contributions generally recognised the added value of EU action in order to boost consumers' trust with regard to the resolution of national and cross-border disputes. The paragraphs below explain how the main points raised by stakeholders in the consultation are taken into account in this IA.

- The problem definition (Chapter 4) is shaped to take account the points identified as problematic by stakeholders (ADR/ODR coverage, consumers' and businesses' awareness and quality of ADR schemes). Similarly, the objectives (Chapter 6) accord

⁹ "A new Strategy for the Single Market – At the service of Europe's economy and society" – Report to the President of the European Commission (9 May 2010).

¹⁰ Europe 2020 flagship initiative: "A Digital Agenda for Europe", COM (2010) 245, p. 13.

¹¹ Conclusions of the European Council of 24-25 March 2011 (EUCO 10/11)

¹² Conclusions of the Competitiveness Council of 30 May 2011 on the priorities for re-launching the Single Market (Doc.10993/11) <http://register.consilium.europa.eu/pdf/en/11/st10/st10993.en11.pdf>

¹³ European Parliament resolution of 6 April 2011 on Governance and Partnership in the Single Market [2010/2289(INI)].

¹⁴ http://ec.europa.eu/dgs/health_consumer/dgs_consultations/ca/docs/adr_consultation_paper_18012011_en.pdf See Feedback Statement from the public consultation in Annex III.

with respondent's opinions on what should be improved, namely the offer of quality ADR schemes particularly for cross-border disputes and disputes in the digital environment.

- Respondents agreed that consumer ADR coverage should be improved. Stakeholders from all categories underlined the importance of taking into account the already established ADR, especially in highly regulated sectors (e.g. energy, electronic communications and financial services): the importance of taking into account what already exists is stressed in both Chapters 7 and 8. Different policy options on how to fill in the gaps in ADR coverage are assessed under paragraph 7.2.
- Many respondents supported the improvement of online dispute resolution schemes for ecommerce transactions: different policy options on how to develop ODR are examined in paragraph 7.2.
- Few respondents suggested creating a European Consumer Ombudsman to deal with cross-border complaints: a specific option is examined (option 4 in paragraph 7.2 and option 4 in paragraph 1 of Annex VI) and discarded for reasons of subsidiarity and proportionality.
- Many Member States and business representatives believed that the voluntary nature of ADR should be preserved. A number of consumer representatives were more favourable to mandatory ADR, but only for traders and especially in highly regulated sectors: the introduction of paragraph 7.1 explains why mandatory ADR was discarded as a policy option.
- Most respondents underlined that performing ADR schemes should be guided by a number of common principles, such as independence, impartiality, transparency and effectiveness. For consumer associations the principles of consumer ADR should be included in a binding instrument: the policy options in paragraph 7.1 as well as those in paragraph 3 of Annex VI examined a full range of approaches which would ensure ADR schemes meet quality criteria.
- According to respondents, ADR funding should be left to each Member State to decide; therefore the IA does not examine the issue of funding. Respecting the principle of subsidiarity, the policy options leave it to Member States to decide how best to fund ADR schemes.
- Respondents stated that a fundamental pre-condition to the greater use of consumer ADR schemes is raising the awareness of consumers and business. A majority of respondents, including business representatives, stressed that businesses should help spread information about ADR schemes: businesses' involvement in providing information is examined in paragraph 7.1 as well as in paragraph 2 of Annex VI. Additionally, other ways of providing information to both consumers and businesses can be found in the policy options of paragraph 7.1.
- A majority of respondents underlined that it would be difficult to envisage ADR schemes dealing simultaneously with both consumer and SME disputes, since a different and separate treatment is required for disputes of SMEs (B2B): the IA focuses exclusively on B2C and ADR and does not address the issue of B2B ADR.

Moreover, in March 2011, the Commission services together with the European Parliament (IMCO Committee) organised a summit on "Alternative Dispute Resolution for internal market and consumers", which brought together some 200 interested parties. The debate revealed a unanimous support for the development of ADR for consumers, including ODR and highlighted the need for EU action¹⁵. The Hungarian Presidency stressed the importance of ADR as a complement to in-court litigation. Members of the Parliament expressed their full support for the development of ADR, also to enhance consumer confidence when shopping cross-border. While they agreed that there is no one-size-fits-all approach, they warned that too many different schemes may confuse the consumer and deliver mixed results. Many speakers stressed the lack of awareness of existing ADR schemes, both on the consumer and the business side. Experiences reported from Italy, the Netherlands and Denmark showed that companies not only take part in ADR schemes to boost their image, but also use the data on solved disputes to improve their products, services and - as a result - consumer satisfaction. However, speakers also stressed that businesses do not always engage in ADR proceedings and that some consumer disputes cannot be dealt with through out of court means because ADR schemes in some geographical areas or in some sectors are not available. . The Commission was invited to come forward with a proposal to provide clarity on the conditions needed to ensure high quality ADR schemes in all consumer markets, and particularly for e-commerce.

Furthermore, the "ADR study"¹⁶ carried out an in-depth analysis of existing ADR schemes and their functioning in all Member States. Its main conclusions highlighted that: i) Gaps in the coverage of ADR procedures persist both at sector-specific and geographical level; ii) Lack of awareness and insufficient information prevent consumers and businesses from using ADR schemes; and iii) there is a significant number of ADR schemes, which are not in line with core principles laid down by the two Recommendations¹⁷, in particular as regards transparency.

A number of complementary studies and inputs informed the preparation of this IA, in particular:

- In 2009, the Commission published a study on consumer redress in the European Union¹⁸, which examined, through face-to-face interviews, consumers' perceptions and real experiences with different redress mechanisms.
- In 2009, the Commission published a consultation document on ADR in the area of financial services¹⁹.
- In 2010, the Commission published a consultation on "the future of electronic commerce in the internal market and the implementation of the Directive on

¹⁵ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+COMPARL+PE-462.616+02+DOC+PDF+V0//EN&language=EN>. A summary report can be found in Annex IV

¹⁶ Study on the use of Alternative Dispute resolution in the European Union, CIVIC Consulting, 2009, available at: http://ec.europa.eu/consumers/redress_cons/adr_study.pdf

¹⁷ In 1998 and 2001 the Commission has adopted two Recommendations on consumer ADR (see paragraph 3.3 of this document on "Consumer ADR").

¹⁸ "Consumer redress in the European Union: consumers' experiences, perceptions and opinions", 2009 http://ec.europa.eu/consumers/redress_cons/docs/cons_redress_EU_qual_study_report_en.pdf

¹⁹ http://ec.europa.eu/internal_market/finservices-retail/docs/redress/consultation_summary_en.pdf

Electronic commerce"²⁰, including a number of questions on online dispute resolution.

- In 2010, the Commission services organised a workshop with ADR experts from 16 Member States to discuss best practices.
- Between December 2010 and January 2011, the Commission services consulted 335 companies from all EU Member States on their experiences and views on ADR, through the European Business Test Panel²¹. In addition, between March and May 2011, another 927 small and medium size enterprises responded to questions regarding ADR through the SME survey platform.
- In April 2011, a workshop on "ADR: how to make it work better?" was organised within the European Consumer Summit²² with 60 stakeholders participating. At the Summit the Commission also published the results of a major survey on consumer empowerment that also examined consumers' willingness to use ADR.
- The Commission services discussed ADR with various groups set up by the Commission such as: FIN-NET, the Financial Services User Group, the European Consultative Group, the European Consumers Centre network, the Consumer Policy Co-operation Group and the Consumer Policy Network.
- Finally, the Commission is participating in the activities of the Working Group on ODR set up in 2010 by the United Nations Commission on International Trade Law (UNCITRAL)²³.

2.3. Procedural Aspects

2.3.1. *The Impact Assessment Steering Group*

In October 2010, DG SANCO set up an IA Steering Group in which the Directorates General for Competition, Enterprise and Industry, Justice, Information Society and Media, Internal Market and Services, Mobility and Transport, Energy as well as the Secretariat General and the Legal Service participated. The IA Steering Group met 3 times.

In addition, DG SANCO consulted other services of the European Commission within the Inter-service Group on Consumer Policy. The Directorates General for Budget, Communication, Competition, Economic and Financial Affairs, Energy, Enterprise, Environment, Information Society, Justice, Internal Market, Transport, Regional Policy, Research, Education and Culture, the Secretariat General and the Legal Service participated.

2.3.2. *The Impact Assessment Board*

A draft IA was submitted to the IA Board (IAB) on 21 June 2011 and discussed at the meeting of 19 July 2011.

²⁰ Available at: http://ec.europa.eu/internal_market/consultations/docs/2010/e-commerce/questionnaire_%20ecommerce_en.pdf

²¹ http://ec.europa.eu/yourvoice/ebtp/consultations/2010/adr/index_en.htm

²² http://www.european-consumer-summit.eu/workshops3_en.asp

²³ http://www.uncitral.org/uncitral/commission/working_groups/3Online_Dispute_Resolution.html

2.3.3. *Opinion of the IAB*

The IAB in its first opinion, asked for a revision of the document by taking into account the comments submitted by the IAB. In this light, the following modifications were made: i) the problem definition (Chapter 4) was improved by strengthening the cross border dimension, clarifying the gaps in ADR coverage and the link between ADR and ODR, ii) the subsidiarity and proportionality analysis strengthened by explaining why an EU response addresses the problem better than uncoordinated action by Member States (Chapter 5), iii) the description of the policy options was improved to better reflect their practical implications (paragraphs 7.1 and 7.2), iv) more detailed explanations were included as regards the implementation and administrative costs by including costs and by providing specific examples (Chapter 7); the robustness of the data used was analysed further in Annex II, v) the stakeholders' views became more prominent throughout the text, particularly under each option (paragraph 2.2 and Chapter 7).

The IAB in its second opinion, raised the following main points for review: i) better substantiation of the existence and magnitude of the market failures and their relevance for the functioning of the internal market, ii) clearer differentiation between more developed and less developed Member States in terms of ADR, iii) provision of more detailed information on what the options will entail in practice for different Member States and iv) better demonstration of costs and benefits of the preferred policy options. The IA was amended accordingly. In particular, an annex was added (annex XII) to demonstrate better the cost of not having ADR and the subsequent costs to businesses. Its main conclusions were added in paragraph 4.2. Clusters of Member States regarding the level of ADR coverage were added in paragraph 3.3.2. Examples of costs incurred by existing ADR schemes were added in paragraph 7.1.1.2. The preferred options, especially the one of ADR in paragraph 7.1.1.2, clarified the effects on Member States, according to their situation in terms of development of ADR, as well as on businesses. A new paragraph (4.2.1) strengthens the argument that using ADR is an attractive alternative to consumers. The preferred option of ODR in paragraph 7.2.1.2 clarified the impact in terms of costs for the use of languages.

2.3.4. *The structure of the IA*

This IA analyses in-depth the problems linked to ADR/ODR in the EU (chapter 4) and argues why action at EU level is necessary (chapter 5). The IA presents a set of options which addresses the problems identified in relation to ADR (paragraph 7.1)²⁴ and a set of options which respond to the problems linked to ODR in cross-border e-commerce transactions (paragraph 7.2). The impact of each option is analysed against a set of criteria related to benefits and costs. Finally, an overall analysis of the combined options and of the preferred combined option is carried out in light of the general objectives of the smooth functioning of the internal market and consumer protection (chapter 8). The final chapters of the present IA assess the compliance of the preferred option with the proportionality principle and set out a methodology to monitor and evaluate the preferred option.

²⁴ A preliminary analysis of the problems identified in relation to ADR schemes is presented in Annex VI.

3. THE EXISTING NATIONAL AND EU FRAMEWORK ON CONSUMER REDRESS AND ENFORCEMENT

This chapter provides a brief overview of the state of play in the areas of consumer redress and enforcement.

3.1. Judicial Redress

Consumers have the right to go to court to resolve disputes and claim compensation. Traditional court proceedings are, however, not always practical or cost-efficient for consumers or businesses. Often, the costs (e.g. court, lawyers' and experts' fees) and the risks attached to litigation make it uneconomic for a consumer to seek compensation, especially for small claims. Procedures are sometimes so complex and lengthy that consumers may find themselves entangled without any clear perception of when their case will be resolved. For example, the average time for solving disputes of civil, commercial and administrative law cases in first instance courts can reach 928 days in Italy, 925 days in Portugal and 408 days in Bulgaria²⁵. Lawyers' fees vary per Member State but in most Member States the hourly amount paid to a lawyer is between €100 and €300. In a few Member States it can even exceed €700. As a result, only 2% of consumers who had a problem brought their complaint to court in 2010²⁶ and 25% of consumers would not go to court for less than €1000²⁷. In addition, 54% of businesses would prefer to solve disputes through ADR rather than court²⁸.

Simplified court procedures can ease consumers' access to justice and exist in almost all Member States for national cases. The 2007 Regulation on "*European Small Claims Procedure*"²⁹ intended to simplify and speed up litigation concerning small claims in cross-border cases. It is an established procedure, which is also available to consumers as an alternative to the procedures existing under national laws. The success of this procedure, however, depends on its effective application by the national courts. In a survey conducted in 2010³⁰, in 47% of courts visited judges were not aware of the European Small Claims Procedure. The relevant forms were not made available on the premises or the websites of 41% of the courts visited. Consumers find it difficult to fill in the forms on their own, while in 41% of cases, assistance in filling in the forms and starting the procedure was not available to consumers. In 76% of cases examined, the European Small Claims Procedure was not free of charge for consumers. Consumers also face language problems (no assistance is foreseen and certified translators are usually too expensive). There are also difficulties in determining the competent court, as well as with the execution of decisions.

²⁵ European judicial systems Edition 2010 (data 2008): Efficiency and quality of justice, European Commission for the Efficiency of Justice (CEPEJ), p.159
<https://wcd.coe.int/wcd/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=164098&SecMode=1&DocId=1653000&Usage=2>

²⁶ Flash Eurobarometer 299 (hereafter EB 299) on "consumer attitudes towards cross-border trade and consumer protection", The Gallup Organisation 2010
http://ec.europa.eu/public_opinion/flash/fl_299_en.pdf

²⁷ EB 342 on consumer empowerment, 2011, TNS opinion and social, p.192 (hereafter EB 342)
http://ec.europa.eu/public_opinion/archives/ebs/ebs_342_sum_en.pdf

²⁸ Flash Eurobarometer 300 on "retailer attitudes towards cross-border trade and consumer protection", The Gallup Organisation 2010, p.79 -hereafter EB 300. , p. 220.

²⁹ Regulation (EC) no 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure. This Regulation does not apply to Denmark.

³⁰ Draft ECC-Net Joint Project on the European Small Claims Procedure, to be published in the second half of 2011.

A reflection on collective redress continues at EU level. In February 2011, the Commission launched a consultation to identify which forms of collective redress could fit into the EU legal system and into the legal order of its Member States³¹. Currently, 14 Member States have judicial mechanisms whereby a group of consumers or a representative entity representing the consumer public interest can request compensation for harm caused by an illegal practice. Other Member States may soon introduce such systems (e.g. Belgium). These mechanisms are designed for collective claims and can only be used if a number of consumers have been harmed by an illegal practice of a trader; but not all consumer disputes are collective claims.

3.2. Enforcement

Several instruments have been put in place to improve the enforcement of consumer rights within the EU. These instruments are complementary and provide a set of tools that can be used to enforce consumer rights depending on the circumstances (e.g. the number of consumers involved, the amount or the complexity of the claims).

Under the Directive on "*Injunctions for the Protection of Consumers' Interests*", adopted in 1998 and codified in 2009,³² consumer organisations or public enforcement authorities in all Member States can take legal action to stop an illegal practice by a trader who has breached a consumer protection rule. The Commission Report concerning the application of this Directive published in 2008 shows that the mechanism created by the Directive which enables qualified entities of one Member State to act in another Member State has clearly not been as successful as it was hoped.³³ However, whilst injunctive actions are rarely used for cross-border infringements, several Member States and consumer associations stated that these actions are used fairly successfully by consumer associations for national infringements, such as misleading advertising or unfair contract terms³⁴.

For cross-border cases, the "*Consumer Protection Cooperation*" Regulation adopted in 2004 established a network of consumer enforcement authorities that pursue cross-border breaches of consumer acquis³⁵. In certain sectors, such as financial services, transport, telecommunications and energy, regulators play an important role in market surveillance³⁶. It should be noted though that these mechanisms often do not foresee compensation for harm suffered by consumers.

³¹ http://ec.europa.eu/dgs/health_consumer/dgs_consultations/ca/collective_redress_consultation_en.htm
³² Directive 2009/22/EC of the European Parliament and of the Council of 23 April 2009 on injunctions for the protection of consumers' interests.

³³ Report from the Commission concerning the application of Directive 98/27/EC of the European Parliament and of the Council on injunctions for the protection of consumers' interest, 2008, COM(2008) 756 final <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0756:FIN:EN:PDF>

³⁴ E.g. Bulgaria, Czech Republic, Germany, France, Italy, Latvia, Austria, Sweden, Slovakia and the UK.

³⁵ Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws, OJ L 364, 9.12.2004, p.1.

³⁶ For example, the recently adopted EU legislation in the energy sector reinforces regulators' powers and duties in monitoring the development of competition and ensuring enhanced customer protection and information. The regulators will have new powers, such as the power to issue binding decisions, carry out investigations and impose effective, proportionate and dissuasive penalties. See Directives No 2009/72/EC and No 2009/73/EC; OJ L 211, 14.8.2009 p. 55 & 94.

3.3. Consumer ADR

3.3.1. Development of ADR at EU level

The Commission has adopted two Recommendations on consumer ADR in 1998 and 2001. The former³⁷ applies to ADR schemes which either propose or impose a solution to resolve a dispute. The latter³⁸ applies to more consensual resolution of disputes. A database with the national ADR schemes, which according to the Member States are in conformity with the two Recommendations, and are thus notified to the Commission, is available online³⁹.

The Commission Recommendations have brought limited results due to their non-binding character. 40% of the existing ADR schemes are not notified to the European Commission. This is either due to the fact that these ADR schemes do not comply with the principles laid down in the Recommendations or because some of them are not aware of the notification procedure⁴⁰. For example, Lithuania has five ADR schemes but only one notified.

The Consumer Policy Strategy 2007-2013⁴¹ envisaged reinforced monitoring and enhanced use of the existing Recommendations on ADR.

A number of sectoral EU Directives contain a clause that either obliges or encourages Member States to set up ADR schemes⁴². In particular, EU legislation on telecommunications and energy⁴³, the 2008 Consumer Credit Directive, the 2007 Payment Services Directive, the Directive on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) and the Regulation on cross-border payments require that adequate and effective ADR schemes are put in place. The Services Directive requires service providers that are part of an ADR scheme to inform consumers in this regard. In other sectors, EU legislation (E-commerce directive of 2000, Postal Services Directive, Markets in Financial Instruments Directive –MiFID- of 2004) encourages Member States to establish ADR schemes. Finally, the 2008 Directive on “*certain aspects of mediation in civil and commercial matters*” covers cross-border mediation. The Directive promotes the amicable settlement of disputes, including consumer ones, by encouraging the use of mediation and by ensuring a sound relationship between the mediation process and judicial proceedings.

The information available on how the ADR clauses are implemented is limited for those Directives that "encourage" the development of ADR since Member States usually do not notify this information. In addition, the Directives that "require" the establishment of ADR are not always fully implemented yet. For example, less than 20 Member States have implemented the ADR clause included in the Consumer Credit Directive. Even though the energy package requires the establishment of ADR schemes, the draft report of the Energy Working Group shows that there are still Member States with no ADR for energy (e.g. the Czech Republic).

³⁷ Commission Recommendation 98/257/EC on the principles applicable to the bodies responsible for the out-of-court settlement of consumer disputes, OJ L 115, 17.04.1998, p.31.

³⁸ Commission Recommendation 2001/310/EC on the principles for out-of-court bodies involved in the consensual resolution of consumer ADR, OJ L 109, 19.4.2001, p.56.

³⁹ http://ec.europa.eu/consumers/redress_cons/adr_en.htm

⁴⁰ There is no data available on why each ADR scheme is not notified to the EU.

⁴¹ Commission Communication "EU Consumer Policy strategy 2007-2013", COM(2007)99 final, p. 11

⁴² An exhaustive list of the EU Directives referring to ADR can be found in Annex V.

⁴³ Directives 2009/72/EC and 2009/73/EC; OJ L 211, 14.8.2009 p. 55 & 94

The Commission has also established two networks dealing with ADR. The European Consumer Centre network (ECC-net)⁴⁴ helps consumers to access the appropriate ADR scheme in another Member State in case of cross-border disputes. FIN-NET⁴⁵ consists of ADR schemes that handle cross-border disputes between consumers and financial services providers.

3.3.2. ADR in the Member States

In Member States, the setting up of ADR schemes has progressed over the last decade. More than 750 consumer ADR schemes exist in the EU⁴⁶. They are highly diverse across the EU but also within Member States. ADR schemes may be established by public authorities, by industry or be set up in cooperation between the public sector, industry and consumer organisations. Their funding may be private (e.g. by industry), public or a combination of both. In most Member States, the geographical coverage of ADR can be national⁴⁷ rather than decentralised at regional or local level⁴⁸. Both sector-specific and multi-sectoral ADR schemes exist in Member States. The vast majority of ADR procedures are based on the willingness of the parties to engage in the process. For 64% of ADR schemes the adherence by the industry is not mandatory⁴⁹. For example, the "Juntas Arbitrales de Consumo" in Spain takes binding decisions but the adherence by the trader is voluntary. When participation to the ADR procedure is voluntary, the possibility for consumers to solve disputes depends on the willingness of the business to engage in ADR. ADR decisions may be taken collegially (e.g. by boards) or by individuals (e.g. by a mediator or ombudsman) and the nature of their decisions may vary considerably (e.g. non-binding recommendations, decisions binding on the trader or on both parties, agreement of the parties). In other words, each ADR scheme is virtually unique.

Some Member States have improved their ADR system in the course of time⁵⁰.

For example, in the Netherlands the Foundation for Consumer Complaints Boards is an umbrella scheme, which works fully electronically and encompasses sector-specific complaint boards, has existed since 1970. In the last ten years the number of the complaint boards has doubled, now amounting to 50, covering sectors from opticians and gardening to energy and internet shopping.

The Financial Services Ombudsman (UK) was founded under the Financial Services and Market Act 2000, on the basis of several separate schemes that had been set up by industry. The scheme has national coverage and received almost one million cases in its first decade.

The Lisbon Arbitration Centre (PT) was co-founded in 1989 as a pilot arbitration project by the Town Hall of the City of Lisbon, the Portuguese Consumer Association, and the Union of

⁴⁴ http://ec.europa.eu/consumers/ecc/index_en.htm

⁴⁵ http://ec.europa.eu/internal_market/finservices-retail/finnet/index_en.htm

⁴⁶ See ADR Study, p.164 to 324 and EU database of ADR schemes

⁴⁷ For example, Denmark, Estonia, France, Ireland, Lithuania, Luxembourg, Latvia, the Netherlands, Poland, Slovakia, Slovenia, Czech Republic, Malta, the United Kingdom.

⁴⁸ For example, Germany, Spain, Italy and Portugal.

⁴⁹ ADR study, p.35.

⁵⁰ For example, France has recently created a Mediation Committee to inform about ADR and monitor how French ADR schemes function. The Netherlands have created an "umbrella" ADR scheme that covers a big number of sectors, where businesses are obliged to participate and fund the system.

Associations of Traders in the District of Lisbon. It is a cross-sectoral ADR scheme that only covers the metropolitan area of Lisbon.

The Conciliation Body for Long-Distance Travel (DE) was created in December 2004 to conciliate disputes in relation to long-distance travels. It is competent to deal with cases concerning travel by rail, air, ferry and bus. Seven conciliators work for it. It is financed by the Ministry of Food, Agriculture and Consumer Protection.

With regard to online dispute resolution tools, very few ADR schemes deal specifically with internet purchases. In fact, most existing ADR schemes do not make a distinction between the purchase of goods or services by distance selling methods such as e-commerce or face-to-face. They deal with all disputes in their field of competence (e.g. financial services, telecommunications or travel). Very few ADR schemes (e.g. ECODIR⁵¹, Risolvi-online⁵², Der Online Schlichter⁵³) handle the entire process online where consumers, traders and ADR schemes communicate during the whole procedure through a web-based system in order to resolve disputes⁵⁴. About half of the existing ADR schemes, however, provide for an online complaint form which can be submitted directly online or sent by post or email⁵⁵. ODR is nevertheless perceived positively; about 60% of businesses⁵⁶ and 64% of consumers state that they would be willing to solve disputes with consumers through ODR⁵⁷.

The table below, which is divided in four clusters, gives an overview of the level of ADR coverage⁵⁸ and is based on the ADR schemes that Member States notified to the European Commission.

As demonstrated, one third of the EU Member States already have in place ADR to cover all consumer disputes (cluster 4); all but Malta have a cross-sectoral ADR, covering virtually all consumer disputes. Two Member States have no notified ADR (cluster 1). It should be noted, however, that three ADR schemes in Slovakia and six in Slovenia operate without being notified to the Commission⁵⁹.

Moreover, eleven Member States (cluster 3) have several ADR schemes, covering either specific sectors or specific regions. Similarly, cluster 2 includes five Member States that have either few sector-specific or regional ADR schemes.

⁵¹ ECODIR stands for "Electronic Consumer Dispute Resolution" and is concerned with disputes for transactions between businesses and consumers taking place over the Internet. <http://www.ecodir.org/fr/index.htm>

⁵² RisolviOnline (<http://www.risolvionline.com/>) is a service offered by the Milan Mediation Chamber that allows the resolution of commercial Disputes and can be used both by individual consumers/users and by enterprises.

⁵³ The Online Schlichter (https://www.online-schlichter.de/de/ueber_uns/index.php) is is competent for the handling of e-commerce disputes, i.e. disputes over contracts which were concluded online.

⁵⁴ For example, for a brief history and overview of ODR, including at the international level, see Pablo Cortes "Online Dispute Resolution for Consumers in the European Union", Routledge, 2011
⁵⁵ ADR study p.100 and 143.

⁵⁶ European Business Test Panel results available at http://ec.europa.eu/yourvoice/ebtp/consultations/2010/adr/statistics_en.pdf

⁵⁷ Preliminary results on a study on the development of e-commerce in the EU, to be published in the second half of 2011.

⁵⁸ Available at: http://ec.europa.eu/consumers/redress_cons/adr_en.htm

⁵⁹ ADR study, pp. 89-90

ADR coverage	Member States
1. No ADR	Slovenia, Slovakia
2. Partial coverage (few sector-specific or local ADR schemes)	Ireland, Italy (few sector-specific and local), Cyprus (one sector-specific), Poland (few sector-specific), Romania (one sector-specific)
3. Numerous sector-specific or local ADR schemes	Belgium (numerous sector-specific), Bulgaria (numerous local), Czech Republic (numerous local), Germany (numerous local), Spain (numerous local), France (numerous sector-specific), Luxemburg (numerous sector-specific), Hungary (numerous local), Austria (numerous sector-specific), Portugal (numerous local), UK (numerous sector-specific)
4. Full coverage	Denmark, Estonia, Greece, Latvia, Lithuania, Malta, Netherlands, Finland, Sweden

Furthermore, the table below demonstrates the number of notified and non-notified ADR schemes in the Member States, as in 2009⁶⁰, as well as the current number of notified ADR schemes⁶¹. Between 2009 and 2011, Member States notified a number of ADR schemes, the total number now totalling 492⁶². In some Member States, a high number of ADR schemes are still not notified (e.g. Italy, UK and Poland). For example, the Czech Republic notified 22 schemes between 2009 and 2011. Full coverage is however not yet achieved and Member States continue to have gaps in the coverage of many sectors.

Member State	ADR schemes notified to the EC until 2009	Non-notified ADR schemes	ADR schemes currently notified to the EC (2011)
AT	18	4	18
BE	24	14	25
BG	0	3	25
CY	1	0	1
CZ	0	5	20
DE	223	24	203

⁶⁰ ADR study (Annex I)

⁶¹ According to the Commission database of notified ADR schemes, available at: http://ec.europa.eu/consumers/redress_cons/adr_en.htm

⁶² There are no data available on the number of non-notified ADR schemes after 2009.

DK	19	2	19
EE	2	0	2
ES	74	2	73
FI	2	1	4
FR	18	17	20
GR	3	0	3
HU	18	2	17
IE	5	10	5
IT	4	125	4
LT	1	4	1
LU	5	1	5
LV	1	2	1
MT	0	5	4
NL	4	0	4
PL	3	21	4
PT	13	0	14
RO	1	1	1
SE	1	15	1
SK	0	3	0
SL	0	6	0
UK	22	21	18
EU	462	288	492

3.4. Scope of analysis of the IA

The present IA focuses exclusively on the area of out-of-court dispute resolution. It aims to analyse a range of policy options to improve consumer redress through ADR and ODR, which is of particular significance in strengthening consumers and businesses' confidence in the internal market, and which implies a well-developed and coherent set of efficient national ADR systems to function properly. Other existing instruments enhancing the application of consumer rights in the internal market through judicial means and enforcement action (see paragraphs 3.1 and 3.2) do not fall within the scope of this IA.

4. PROBLEM DEFINITION

4.1. Constraints of judicial redress

A substantial proportion of European consumers encounter problems when buying goods and services in the internal market. In 2010, this was the case for approximately one in five European consumers⁶³. Despite a generally high level of consumer protection guaranteed by legislation, problems encountered by consumers are often left unresolved. The losses incurred

⁶³ EB 342, p.169.

by European consumers because of problems with purchased goods or services are estimated at 0.4% of EU GDP⁶⁴. This includes the detriment suffered by European consumers in relation to cross-border shopping, which is estimated between €500million and €1 billion⁶⁵.

The reasons why consumers do not pursue their claims are multiple. Consumers are often not aware or not certain whether the problems they encounter qualify as a violation of their rights. Faced with the complexity of legal terms and conditions governing transactions, the consumer is often not convinced that pursuing a claim would lead to a successful solution and in most cases drops the claim if an initial contact with the trader proves unsuccessful.

Another factor is the perceived burden of pursuing a claim, in particular through judicial means. Research shows that 46% of consumers who complain to a trader and are not satisfied with the way their complaint is dealt with take no further action⁶⁶. Before bringing a case to court, consumers estimate the time, money and effort required to obtain redress and compare it with the value of the claim. When the value of the claim is modest, it is often not pursued by the consumer because the input required is considered excessive. Lengthy and complicated proceedings, high costs linked to judicial proceedings and the uncertain outcome often discourage consumers from seeking judicial redress. 78% of European consumers did not take their dispute to court because they thought it would be too expensive, lengthy and complicated⁶⁷.

Consumers' confidence in obtaining effective redress is even lower in disputes linked to cross-border and online transactions. Judicial proceedings across borders imply a number of obstacles that an average consumer is not ready to face, such as diverse national legislation, language barriers, potentially higher costs, complex institutional and procedural aspects. 57% of consumers consider the resolution of problems more difficult when shopping cross-border⁶⁸. The existing procedures for cross border claims (see Chapter 3) appear to have been of limited use and have not solved the problem. The perception that disputes in cross-border situations and in online transactions are particularly difficult to resolve affects consumers' confidence in shopping across borders and online. The lack of confidence in online transactions undermines the growth of the cross-border online trade. In fact, online trade in the European Union remains fragmented and largely confined to the national markets whereas its cross-border dimension is not fully exploited by consumers and businesses.⁶⁹

This lack of confidence also has an impact on the competitiveness of businesses, which do seek or are unable to attract clients through cross-border trade. 59% said that an

⁶⁴ See Annex II for the calculation method.

⁶⁵ See Annex II for the calculation method. Assuming that the individual losses are similar for both domestic and cross-border purchases, it is estimated that the detriment suffered by EU consumers, related to cross-border shopping, is between €500million and €1 billion. This assumption is for example also supported by the fact that when comparing the shopping experience of domestic and cross-border distance shoppers, there does not seem to be significant differences in encountered problems. 16% of shoppers experienced a delay with a product purchased cross-border in the EU while 18% of shoppers experienced a delay with a product purchased domestically.

⁶⁶ EB 299 p.21.

⁶⁷ EB 342, p. 204

⁶⁸ EB 299, p.30.

⁶⁹ COM(2009) 557 final p.2.

important/very important obstacle to them selling cross-border is the potentially higher cost involved in resolving complaints and conflicts cross-border compared to domestically⁷⁰.

In conclusion, lack of confidence in cross border and online transactions and the consequent reluctance to engage in them, prevents consumers and businesses' from reaping the benefits of a fully integrated retail market, including its digital dimension. It should be noted that problems identified in the cross-border context are unlikely to be addressed unless they are also tackled at the national level to thus build consumer confidence in the Single Market, and in effective methods of redress such as ADR.

4.2. Advantages of ADR

An effective way to improve redress in the internal market consists in improving the availability and increasing the use of out-of-court dispute resolution schemes by consumers and businesses. ADR schemes are a low-cost and quick alternative for consumers and businesses seeking to resolve disputes. The vast majority of the ADR procedures are free of charge for the consumer, or of moderate costs (below €50). Most ADR cases are decided within 90 days.⁷¹ 48% of European consumers think it is easy to resolve disputes through arbitration, mediation or conciliation⁷². Consumers are more willing to resolve disputes through ADR rather than court. On the businesses side, 54% of businesses prefer to solve disputes through ADR rather than in court¹ and 82% who have already used ADR would use it again in the future⁷³. In other words, ADR can offer a number of advantages: proceedings are simpler, faster and inexpensive.

Research carried out in preparation of the present IA demonstrates that an estimated amount of € 20 billion, which corresponds to 0.17% of EU GDP, could be saved and used for other activities in the internal market if there were well functioning and transparent ADR systems⁷⁴. In addition to the overall losses of 0.17%, the estimated losses due to the lack of efficient ADR dealing with disputes linked to cross-border e-commerce amount to around €2.5 billion, corresponding to 0.02% of EU GDP⁷⁵. The amount of losses due to cross-border disputes, including e-commerce, is likely to increase due to further development of the digital retail internal market and more competitive markets in the products and services sectors.

Similarly, evidence shows that ADR benefits EU businesses too. When looking at time and cost savings, compared to going to court, the added value of ADR is undeniable. In particular, regarding time, businesses could save up to 258 days if they choose to use ADR⁷⁶. In addition, according to conservative calculations⁷⁷, the savings for businesses on a yearly basis can range from 1.7 billion to 3 billion if they use ADR instead of court proceedings.

⁷⁰ Flash EB "Business attitudes towards cross-border sales and consumer protection", The Gallup Organisation, 2008 http://ec.europa.eu/public_opinion/flash/fl_224_en.pdf

⁷¹ See: ADR study, p.8.

⁷² EB 299, p.30.

⁷³ EB 300, p.79 This evidence is further reinforced when looking at the satisfaction of businesses; of those who used ADR, 76% found it a satisfactory way to settle the dispute European Business Test Panel, http://ec.europa.eu/yourvoice/ebtp/consultations/2010/adr/index_en.htm.

⁷⁴ See Annex II for the calculation method.

⁷⁵ See Annex II for the calculation method.

⁷⁶ See Annex XII for the calculation method.

⁷⁷ See Annex XII for the calculation method.

Other calculations, according to a study⁷⁸, show that handling a domestic dispute in court can even cost on average € 25.337⁷⁹. In that case, the savings for businesses would then vary from a minimum of € 3 billion to a maximum of € 13 billion. On the contrary, the costs for businesses for handling a domestic dispute via ADR amount to € 472⁸⁰.

Recent studies show that ADR, including ODR, cases in the EU have increased: from 410.000 in 2006 to 530.000 in 2008⁸¹. However, a very low 5% of European consumers took their case to an ADR scheme in 2010⁸² and only 9% of businesses report having ever actually used ADR⁸³. Disputes related to cross-border transactions are increasing. The volume of cross-border complaints received by ECC reached 35.000 in 2009, an increase of 55% compare with 2005. The share of complaints on e-commerce transactions has been larger than 55% in 2009 and 2010 and this share has doubled since 2006⁸⁴. In 2009, 38 FIN-NET members reported 1542 cases dealt with, while in 2010 32 members reported 1800 cases.

4.2.1. Consumers' perceptions on ADR

A recent study based on focus groups with consumers⁸⁵, demonstrated that consumers have positive experiences with and perceptions of ADR. The most frequently identified benefit of using ADR is that it involves an 'unbiased' third party in the process. According to consumers, using ADR also has the benefit of feeling less aggressive to the supplier, less intimidating for the consumer and cheaper than a court action. Where consumers felt the cost of the product or service involved in the complaint was relatively low, ADR was felt to be ideal.

Most consumers who chose ADR in dealing with their complaint recalled an uncomplicated and transparent process, where much support and advice was provided. The fact the entire process is handled out of court was seen as a positive benefit. The resultant simple and fast process was compared very favourably with the perceived long and slow process that formal legal proceedings would entail.

Most of the consumers interviewed believed it is 'almost impossible' to seek redress in relation to cross-border purchases. Similar concerns and beliefs exist around purchases made

⁷⁸ The Cost of Non-ADR – Surveying and showing the actual costs of Intra-community Commercial Litigation. Funded by the European Union ("specific programme Civil Justice 2007-2013), implemented by a consortium led by ADR Center, in collaboration with the European Company Lawyers Association (ECLA) and the European association of Craft, Small and Medium sized Enterprises (UEAPME).

⁷⁹ Based on a domestic dispute in the EU for a value of € 200.000. However, in Annex XII a more conservative approach regarding the cost and time-savings is considered for the calculations (i.e. € 7.000).

⁸⁰ "Assessment of the compliance costs, including administrative costs/burdens on businesses linked to use of alternative dispute resolution (ADR)", 2011, Civic consulting. However, in Annex XII a more extreme approach regarding the cost is considered for the calculations (i.e. € 854, which is the cost for dealing with ADR for the first time).

⁸¹ [ADR study](#), p.8

⁸² EB 342, p. 184.

⁸³ EB 300, p.76

⁸⁴ "The European Consumer Centre's Network, 2010 Annual Report", p.12 http://ec.europa.eu/consumers/ecc/docs/2010_annual_report_ecc_en.pdf

⁸⁵ Consumer redress in the European Union: consumer experiences, perceptions and choices, 2009, TNS qual, http://ec.europa.eu/consumers/redress_cons/docs/cons_redress_EU_qual_study_report_en.pdf

on-line, with the situation being most extreme where the two (on-line and cross border) are combined. There were many consumers who had made purchases either cross border and / or online, who had experienced problems with their purchases and had not complained to the supplier. Even where an initial complaint had been lodged with the supplier, consumers had not taken the matter further where they had received an unsatisfactory response. When pressed to identify the main barriers to seeking cross-border redress, consumers identified three main issues: being unable to have direct access to the supplier, language barriers, and differences in legislation. A number also expressed the concern that they might have to return to the country of purchase in order to seek redress.

From the views expressed by consumers during the discussions some clear patterns emerge about what the characteristics of an ideal consumer redress mechanism would be. In general, consumers would prefer mechanisms which (in broad order of importance):

- Are as low cost as possible
- Resolve the issue as quickly as possible
- Do not expose them to uncomfortable or distressing experiences
- Are simple and straightforward to understand
- Are demonstrably fair and fully transparent.

However, the challenges described below hinder consumers from seeking and obtaining redress through ADR.

4.3. Challenges limiting the potential of ADR

In order to provide consumers and businesses with quality ADR schemes, the main shortcomings hindering the effectiveness of ADR need to be tackled at both the national and cross border level. Coverage, awareness, quality of ADR schemes and ODR for national and cross-border e-commerce transactions are the main "problematic areas" identified in this IA and confirmed by the different studies conducted and by a number of stakeholders' consultations.

4.3.1. Important gaps in ADR coverage

European consumers do not enjoy the same level of access to ADR in the EU. Despite the 750 existing national ADR schemes gaps still remain both geographically and in sectors. The apparently high number of existing ADR schemes does not guarantee that there is ADR for all consumer disputes⁸⁶. For example, in Portugal the six large arbitration boards have their premises in major cities. The Lisbon Arbitration Centre covers all sectors but only in the metropolitan area of Lisbon. Consumer ADR schemes are a recent development in some Member States (e.g. Bulgaria) and they are not developed in all sectors. No notified ADR scheme exists in Slovakia and Slovenia while ADR is underdeveloped in Cyprus and Romania, with only one ADR scheme covering postal and e-commerce services. By contrast, the Netherlands may have only four ADR schemes but one covers 50 sectors. Belgium has more than 15 ADR schemes, covering more than 10 sectors. As shown by the "ADR study", in many Member States there are no ADR for basic business sectors, such as transport⁸⁷ (e.g. UK, Poland, Austria and Ireland). In other sectors, which are of concrete importance in daily life (e.g. food, non-food goods such as electronic and electrical devices, clothes), the lack of

⁸⁶ See also Annex X.

⁸⁷ "ADR study", p. 59.

ADR schemes is even more marked. For example, Belgium and Luxemburg have no ADR for non-food goods. Sweden, France and Portugal have no ADR in the food sector. One reason may be that some sectors are not regulated by EU or national legislation. Another reason could be the perceived low value of claims in these areas. However, some ADR schemes do exist in these sectors (e.g. for garages in Luxemburg, for driving schools in Denmark and for dry-cleaners in the Netherlands) and there is demand from businesses for ADR to cover disputes in those areas. For example, 24% of businesses were willing to use ADR for disputes on non-food goods but it was not available⁸⁸. On the contrary, for regulated sectors (e.g. financial services, energy, telecoms) the ADR coverage is much wider, although still not complete. Italy and Romania have no ADR for insurance.

4.3.1.1. ADR in cross-border disputes

Those existing ADR schemes, which do deal with cross-border disputes, usually deal only with disputes against traders based in their own country and not with disputes against traders located outside their country.

A significant number of the existing national ADR schemes deal with cross-border disputes (62%⁸⁹). For example, the Financial Services Ombudsman in the UK dealt with more than 3000 cross-border cases, while the Dutch Consumer Complaints Board with 200⁹⁰. 10% of the cases dealt with by the Internet Mediator in France and 4% dealt with by the Insurance Ombudsman in Poland concerned cross-border claims. In addition, FIN-Net is also key for the resolution of cross-border disputes related to financial services.

However, important gaps in the coverage of cross-border disputes remain, not only because some ADR schemes are not competent for cross-border disputes but also because of the lack of ADR in some geographical areas and sectors. In 2010, less than 9% of around 35.000 cross-border complaints received by the ECC network were transferred to an ADR scheme⁹¹. This is due to the fact that the ECC network could not find an ADR scheme in the country of the trader to which to submit the dispute.

Improving ADR cross-border cannot be achieved without improving ADR domestically. A narrow focus on cross-border ADR can have disadvantages as, for example, it is difficult to tackle the existing gaps without addressing the coverage problems within the Member States.

4.3.2. Information on ADR: low awareness

The results of the ADR study and of the public consultation showed that awareness levels of ADR schemes are low. On average 44% of EU retailers are not aware of any ADR scheme⁹².

Around 30% of those European consumers who were unable to resolve their problem directly with the trader, did not know either how to take their complaint further or about the existence of ADR⁹³. For consumers, the lack of detailed information about ADR procedures is also a significant barrier to the use of ADR. Businesses rarely provide consumers with information

⁸⁸ European Business Test Panel results available at http://ec.europa.eu/yourvoice/ebtp/consultations/2010/adr/statistics_en.pdf

⁸⁹ "ADR study", p. 339.

⁹⁰ Study on "Cross-Border Alternative Dispute Resolution in the European Union", 2011 available at: http://www.europarl.europa.eu/meetdocs/2009_2014/documents/imco/dv/adr_study_/adr_study_en.pdf

⁹¹ "The European Consumer Centre's Network, 2010 Annual Report", http://ec.europa.eu/consumers/ecc/docs/2010_annual_report_ecc_en.pdf

⁹² EB 300, p.76.

⁹³ EB 342, p.185.

on the competent ADR that could deal with their dispute, either at the point of sale or post-sale, unless this is regulated (e.g. in the financial services sector in UK and the travel sector in Belgium). Websites to guide consumers to the appropriate scheme to deal with their disputes are also lacking⁹⁴.

4.3.3. Quality of ADR schemes and monitoring

ADR schemes do not always respect core quality principles such as transparency, impartiality and effectiveness, as also laid down in the two Commission Recommendations of 1998 and 2001. There is thus no guarantee that they comply with the Recommendations. The impartiality of the entity responsible for the ADR procedure is essential to ensure a fair outcome. This implies the absence of any pressure that could influence the attitude of the entity towards the dispute. This is even more the case when the ADR scheme is financed by one of the parties. In the consultation, some consumer organisations considered that the independence and the impartiality of schemes when ADR is financed by a company and the individual entity is not fully separated from that company is questionable. The transparency of the procedure is also crucial and guarantees that the parties receive all the information they need to take an informed decision before starting a procedure. Many ADR schemes, however, do not have a web-site of their own (22%)⁹⁵. Finally, the effectiveness of the procedure reassures the parties that the dispute will be solved in a quick and simple manner and allows them to see the benefits of ADR, for example if compared to a judicial proceeding. However, at the moment almost half of the existing ADR schemes do not provide online access to the procedure.

Finally, the results of the “ADR study” and of the consultation show that currently data on the functioning of ADR schemes are not sufficiently available. There appears to be no regular monitoring of use and effectiveness of ADR by public authorities. In 41% of ADR schemes, consumers have no information about the use of, the number of cases and the past performance of the ADR scheme⁹⁶.

4.3.4. ODR for cross border e-commerce transactions

While domestic internet purchases are increasing⁹⁷, cross-border e-commerce transactions remain low level at about 9%⁹⁸. Consumers currently lose out by not being able to shop online across borders because they miss the opportunity of comparing the costs of products in the wider EU market, and therefore buying them where they are less expensive. A recent study on cross-border e-commerce⁹⁹ showed that goods offered in other countries are often at least 10% less expensive than domestic goods. As previously discussed, one of the main reasons why consumers often refrain from online cross-border purchases of goods and services is the uncertainty about what to do or to whom to turn to if they experience a problem with a trader of another Member State.

Consumers’ lack of confidence in cross-border e-commerce affects in particular the development of SMEs that could have benefited from a wider market. One of the main

⁹⁴ "ADR study", p.18.

⁹⁵ "ADR study", p.143.

⁹⁶ "ADR study", p.18.

⁹⁷ For example in the UK, Luxembourg, Germany, the Netherlands, France and the Nordic countries, 45% to 65% of internet users buy online.

⁹⁸ Eurostat information society statistics 2010 .

⁹⁹ "Mystery Shopping Evaluation of Cross-Border E-Commerce in the EU", YouGov-Psychonomics (2009), http://ec.europa.eu/consumers/strategy/docs/EC_e-commerce_Final_Report_201009_en.pdf

reasons why SMEs are reluctant to sell goods or to provide services online to consumers in other Member States is the lack of efficient means of resolving a dispute.

For in-court proceedings, EU Regulation 44/2001 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters¹⁰⁰ provides for specific rules on determination of jurisdiction in case of disputes concerning contracts concluded by consumers. The protective rules apply, in particular in case of contracts concluded on the sale of goods financed by a credit and in contracts (other than certain contracts on transport), where the trader "directs its activities" to the Member State in which the consumer is domiciled. In such cases, the consumer can bring proceedings before the courts of the Member State of his domicile and he can be sued only in that Member State.

The application of the jurisdiction rules in in-court dispute resolution have recently been clarified when applied to online transactions (joined cases *Pammer* and *Alpenhof*¹⁰¹). The *rationale* behind the in-court jurisdiction rules is that costs of foreign litigation may be more easily borne by businesses (who can off-set these costs against extended markets) than by individual consumers. Nevertheless, the risk of foreign litigation may be an element which discourages some businesses from extending their commercial offer to other Member States to avoid potential litigation costs and a number of other difficulties when dealing with court procedures in other Member States (e.g. language issues, travelling costs, uncertainty about the legal procedures). The risk of being sued in another Member State constitutes a major obstacle to trading across borders via internet (especially for SMEs). 59% of traders said that an important obstacle to selling cross-border is the potential higher cost involved in resolving complaints across borders. This may in turn prevent consumers from enjoying the benefits of cross-border competition in terms of choice and low prices. 61% of online orders to another EU country failed because the trader refused to serve the consumer's country or did not offer cross-border payment¹⁰².

The important gaps in ADR coverage described under 4.1 result in a scattered and incomplete offer of ADR schemes to solve consumer disputes related to e-commerce transactions. In addition, while half of the existing ADR schemes offer consumers the possibility of submitting their complaint online, very few offer consumers the possibility of conducting the entire procedure online¹⁰³. Handling the entire process online would produce savings in terms of time and ease communication between the parties. In 2010, more than half of complaints (56.3%) received by the ECC-Net were linked to e-commerce transactions¹⁰⁴. However, out of the 35.000 cross border complaints received by ECC network in 2010, 91% could not be referred to an ADR scheme in another Member State¹⁰⁵.

¹⁰⁰ Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I), OJ L 12, 16.1.2001, <http://eur-lex.europa.eu/Result.do?idReq=1&page=2>

¹⁰¹ Joint cases C-585/08 and C-144/09 of the European Court of Justice (Grand Chamber), 7 December 2010

¹⁰² "Mystery Shopping Evaluation of Cross-Border E-Commerce in the EU", http://ec.europa.eu/consumers/strategy/docs/EC_e-commerce_Final_Report_201009_en.pdf

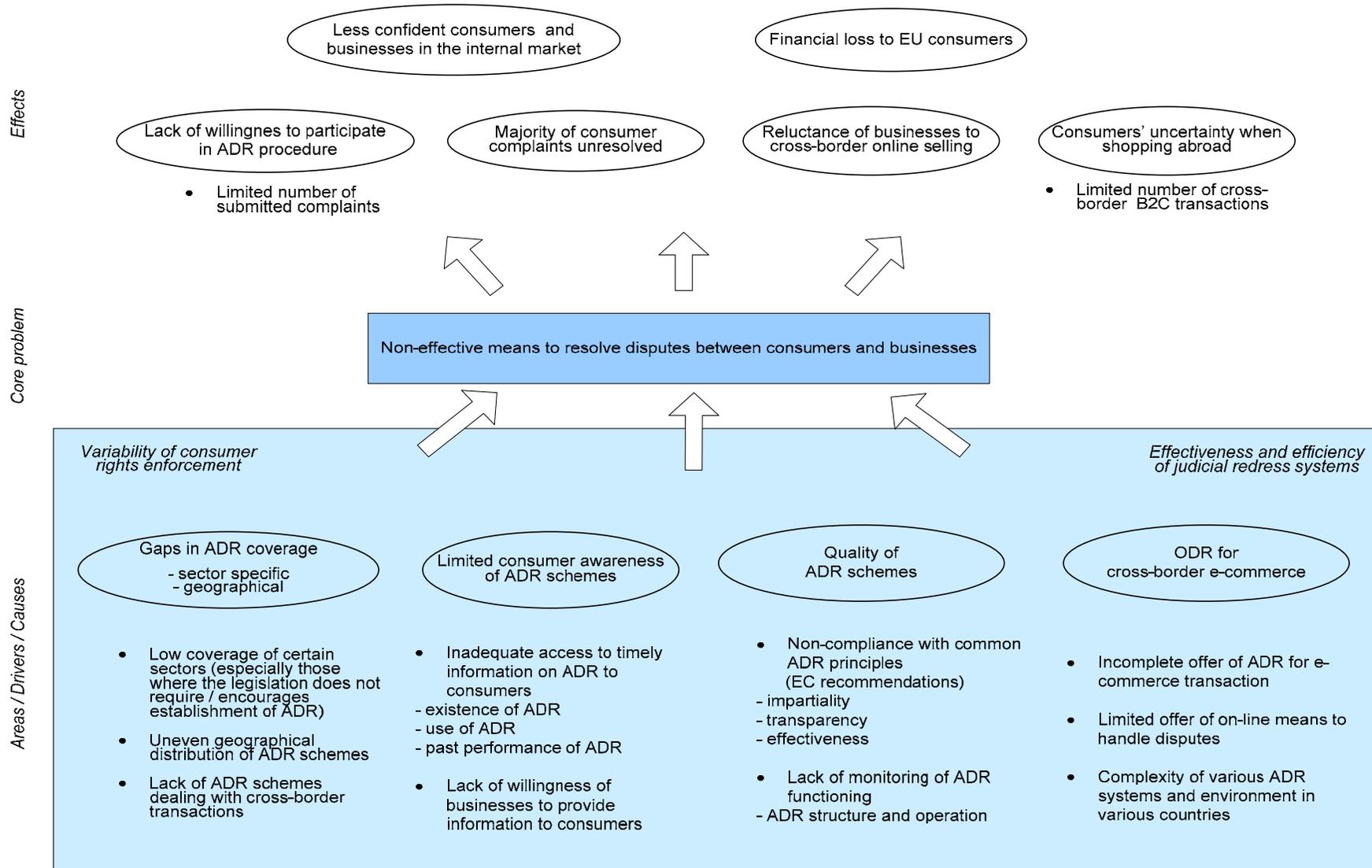
¹⁰³ FIN-NET members are an exception since they can handle consumer disputes entirely online.

¹⁰⁴ "The European Consumer Centre's Network, 2010 Annual Report", p.12 http://ec.europa.eu/consumers/ecc/docs/2010_annual_report_ecc_en.pdf

¹⁰⁵ "The European Consumer Centre's Network, 2010 Annual Report", http://ec.europa.eu/consumers/ecc/docs/2010_annual_report_ecc_en.pdf

The lack of efficient online means of handling disputes between consumers and traders restricts the access of consumers and traders to simple and quick ways to resolve their disputes.

PROBLEM TREE



4.4. Baseline scenario

The baseline scenario assumes no further action at EU level with a view to enhancing the potential of dispute resolution through ADR and ODR.

The two Commission Recommendations (see paragraph 3.3.1) will continue to provide quality principles that ADR schemes should respect. Member States will notify on an ad hoc basis those ADR schemes that function in accordance with these principles.

Regarding the sector-specific legislation that includes provisions on ADR, two developments can be foreseen. Firstly, Member States might set up sectoral ADR schemes as recommended by the EU legislation. No Member States have however currently notified such developments. In addition, Member States are bound to implement the provisions of the sectoral Directives requiring them to put in place ADR schemes. It should be noted that the majority of existing legislation with ADR clauses concerns financial services, an already highly regulated sector where ADR is most commonly found. Furthermore, Member States with no or limited ADR coverage, as described in paragraph 3.3.2, might autonomously set up ADR schemes for some or all consumer disputes.

The disputes consumers could refer to ADR schemes will most likely follow an increasing trend. An increase of more than 90.000 cases submitted to national ADR schemes was observed between 2006 and 2008. A similar trend is noticeable for the complaints submitted to ECC: they increased by 55% between 2005 and 2009 and those related to e-commerce transactions by 50%.

Under the baseline scenario the development of ADR will be limited to few sectors. Consumers and businesses will not be able to resolve all their domestic or cross-border and online disputes through quality out-of-court means. This will result in considerable persistent detriment for consumers, and an uneven playing field for businesses while both businesses and consumers will continue to have little trust in cross-border and online transactions.

5. SUBSIDIARITY AND NEED FOR EU ACTION

Consumer protection belongs to shared competences between the EU and the Member States. As stipulated in the Article 169 of the TFEU, the EU shall contribute, *inter alia*, to protecting the economic interests of consumers as well as promoting their right to information and education in order to safeguard their interests. An ADR/ODR initiative based on Article 114 of the TFEU will help to achieve these objectives in the context of the proper functioning of the internal market. At the same time it will respect the principles of subsidiarity and proportionality.

Developing consumer ADR/ODR is crucial to benefit consumers and businesses and to improve the functioning of the internal market (as described in chapters 3 and 4), as was confirmed by all sections of stakeholder opinion in the public consultation and debates.

Twelve years after the Commission Recommendations on consumer ADR schemes (see paragraph 3.3), the analysis of the current situation indicates that action taken solely at national level has not produced sufficient coverage of ADR. A number of shortcomings (described in paragraph 4.3) still hinder the effectiveness of ADR schemes and well functioning and accessible ODR schemes for cross-border e-commerce transactions remain

underdeveloped. European consumers therefore do not enjoy the same level of access to ADR schemes across the EU¹⁰⁶. Neither is the provision of information to consumers on ADR in all retail market sectors guaranteed. If the development of ADR is left to Member States' action alone, quality ADR schemes will continue to be absent in some sectors of the retail market and in some geographical areas of the EU. Consumers' and businesses' awareness levels will remain low, while the monitoring of national ADR will be done by Member States on a voluntary basis. Finally, there will be no assurance that ADR/ODR schemes respect key principles guaranteeing their quality. This insufficient and fragmented development of ADR in the EU is in contrast with the objectives of the TFEU since it will undermine or create new obstacles to the functioning of the internal market, create unequal consumer protection in the EU and variable commercial conditions for business. Moreover without a well-functioning system of domestic ADR on which cross-border ADR can be based and anchored, the development of an efficient and effective ADR for cross-border disputes, will not be achieved.

The lack of efficient ADR/ODR limits the potential of this means of dispute resolution and creates imbalances in the effectiveness of handling consumer disputes in different Member States, in particular as regards cross-border disputes. This situation affects consumers' confidence in shopping across borders. Both businesses¹⁰⁷ and consumers clearly state that concerns about potential redress problems in another Member State discourage them from selling and buying across borders and thus not fully reaping the potential benefits of internal market¹⁰⁸. Particular attention needs to be paid to generating consumer confidence of in the internal market and to ensuring a level playing field for businesses across Member States.

Furthermore, despite the low level of current cross-border e-commerce transactions, there is a rapidly expanding digital retail market within the Member States¹⁰⁹. Thus, ensuring simple, low-cost and effective means of out-of-court redress is even more important for consumers and traders in order to engage in online transactions across border. Action at Member State level will not lead to the establishment of an EU-wide online dispute resolution which, as indicated in the Digital Agenda, is an essential tool in promoting e-commerce.

The objectives pursued can be better achieved by measures at EU level by reason of its effects and scale. A clear advantage in the definition of common principles and criteria for ADR schemes in all Member States will be an effective and adequate treatment of consumer disputes linked both to the domestic and cross-border transactions. It will also ensure that ADR/ODR is developing in a more homogenous manner in the EU.

In particular, it will allow equal access to quality ADR schemes for consumers and businesses enabling them to resolve their domestic and cross-border disputes in all sectors across the EU,

¹⁰⁶ In some Member States, ADR schemes are not yet developed or cover a limited number of sectors (see section 4.3.1).

¹⁰⁷ In particular for SMEs since their limited administrative capacity would not allow them to pursue claims through judicial means. The availability of easy dispute resolution such as ADR could address such concerns of small and medium enterprise.

¹⁰⁸ Reportedly, 1 in 20 consumers faced problems with cross-border purchases of goods or services, while 59% of traders said that an important obstacle to them selling cross-border is the potentially higher cost in resolving complaints and conflicts cross-border compared to domestically.

¹⁰⁹ Between 2004 and 2010, the percentage of individuals who ordered goods or services over the internet in the EU-25 rose significantly, from 22% to 37%. The development of on-line transactions is becoming a wide-spread phenomenon in the UK, Luxembourg, Germany, the Netherlands, France and the Nordic countries, where 45% to 65% of internet users are online buyers.

including access by electronic means. Consumers will have at their disposal a quick, inexpensive and simple means of settling their disputes with traders irrespective of the market sector and the amount at stake. Many consumers do not fully trust the digital internal market, despite the numerous benefits that it offers, such as access to a wider choice of products and services; in about half of the Member States more than half of the products searched for on the internet could only be found online in another country¹¹⁰. Finally, more effective ADR/ODR in the internal market will reduce consumer detriment and allow consumers to make significant savings, in both off and online transactions, which can be used to purchase extra goods and services. The growth potential of cross-border retail trade, both off and online, identified in the recent years could be significantly strengthened if consumers have greater trust in this type of transactions. Moreover, traders will have similar possibilities in dealing with consumer disputes throughout the EU, thus ensuring a level playing field. The use of ADR/ODR can also help traders enhance their good reputation, as they tend to improve after-sale customer services¹¹¹ thus enhancing the competitiveness of their products and the services they offer to consumers. This is particularly important in promoting benefits for well-performing enterprises.

Unilateral actions at Member State level cannot sufficiently provide consumer and traders with the benefits mentioned above. Uncoordinated efforts by Member States are likely to result in further fragmentation of ADR, which in turn will contribute to unequal treatment for consumers and traders in the internal market and create diverging levels of consumer redress in the EU. Moreover the functioning of an efficient and effective ADR for cross-border disputes presupposes a well-functioning system of domestic ADR on which the cross-border ADR can be based and anchored. Action at EU level is necessary to provide European consumers with the same level of protection and promote competitive practices amongst businesses, thus increasing offer for and demand of products or services across borders and online. An initiative at EU level in this field is supported by the vast majority of stakeholders.

The proportionality aspect will be addressed in detail in chapter 8.3.

¹¹⁰ Mystery Shopping Evaluation of Cross-Border E-Commerce in the EU", YouGov-Psychonomics (2009), http://ec.europa.eu/consumers/strategy/docs/EC_e-commerce_Final_Report_201009_en.pdf

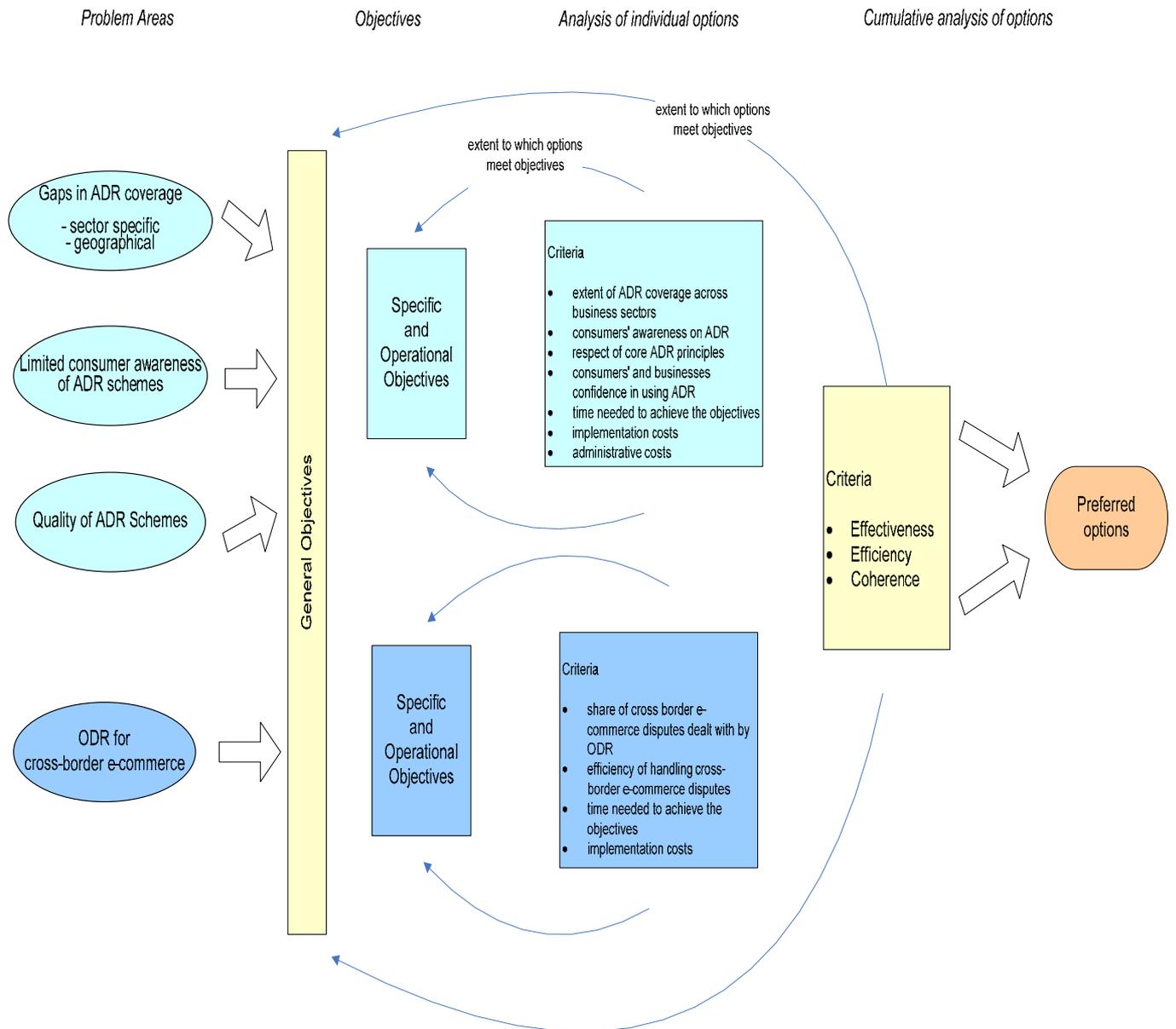
¹¹¹ For example, in the countries where ADR is already well developed (Denmark, Sweden Finland, Germany, Luxemburg, the Netherlands, Czech Republic) an average of 56% of consumers report having obtained a satisfactory redress from traders, while in the countries with the least developed ADR (Bulgaria, Cyprus, Lithuania, Slovenia, Romania and Latvia) satisfactory redress was obtained only by 23% consumers (EB 342, p.75).

6. THE POLICY OBJECTIVES

The aim of this initiative is to improve the functioning of the retail internal market, including the retail digital internal market, and to achieve a high level of consumer protection by enabling consumers' and businesses' access to impartial, transparent and effective means to resolve their disputes out-of-court. This will also contribute to achieving the objectives of the Europe 2020 Strategy. The objectives of this IA are described in the table below.

General Objectives	
<ul style="list-style-type: none"> • To improve the functioning of the retail internal market, including the retail digital market. • To achieve a high level of consumer protection. • To enable consumers and traders to resolve their disputes in an effective manner. 	
Specific Objectives	Operational Objectives
<i>ADR coverage, information and quality</i>	
To ensure access to ADR schemes to facilitate out-of-court dispute resolution for consumers in domestic and cross-border disputes with traders.	<ul style="list-style-type: none"> • To increase the proportion of domestic and cross border consumer disputes solved by ADR schemes. • To reduce the number of unresolved consumer problems with purchased goods or services at the national level and in cross-border cases.
To ensure that consumers and businesses are aware of the existence of ADR.	<ul style="list-style-type: none"> • To ensure that consumers receive information about the ADR competent to deal with their dispute, in particular in cross-border situations. • To ensure that consumers and businesses are aware of the general information related to ADR schemes and to their use, in particular in cross-border situations.
To ensure that ADR schemes offer a quality service to consumers and businesses.	<ul style="list-style-type: none"> • To ensure that ADR schemes provide an impartial service to businesses and consumers, i.e: to ensure that the entity making the decision is not subject to pressure that could influence its attitude towards the dispute (e.g. no conflict of interest with either party). • To ensure that ADR schemes provide a

	<p>competent and transparent service to businesses and consumers, i.e. to make publicly available information on their functioning and their procedures.</p> <ul style="list-style-type: none"> • To ensure that ADR schemes provide an effective service, i.e.: <ul style="list-style-type: none"> • To diminish costs incurred by consumers when pursuing their claims. • To diminish costs incurred by business when dealing with consumer claims. • To diminish time spent by consumers and businesses in solving their disputes. • To provide to consumers and businesses a simple and easy-to-use means to solve their disputes • To ensure that ADR schemes are regularly monitored.
<i>Online Dispute Resolution (ODR) for cross border e-commerce transactions</i>	
<p>To ensure that consumers and businesses can rely on a mechanism to solve their cross-border, e-commerce disputes online.</p>	<ul style="list-style-type: none"> • To give consumers and businesses the possibility to handle all cross-border e-commerce disputes online and out-of-court by providing a web-based tool at EU level. • To develop common criteria upon which the web-based system will be based in order to boost its effectiveness.



7. THE POLICY OPTIONS

Although they are directly interlinked, this Chapter includes separate sets of policy options for ADR and ODR to tackle the problems identified in Chapter 4. This separate presentation allows analysing in greater detail the options which are more specific and better tailored to ADR and ODR (paragraphs 7.1 and 7.2)

However, to pursue the objectives identified in Chapter 6, the combination of the two sets of options on ADR and ODR is needed. As explained further in Chapter 8, this combination will improve the functioning of the retail internal market, including the retail digital internal market, and achieve a high level of consumer protection.

7.1. Policy options for ADR coverage, information and quality

The policy options that follow are the result of a preliminary analysis that is provided in Annex VI. That analysis examined the content of different policy options under the three areas of "ADR coverage", "information on ADR" and "quality and monitoring of ADR". The options that are examined under this paragraph therefore results from the merging of the options examined under those three areas.

From each of the areas analysed in Annex VI the following specific elements were retained in the options that are described in this paragraph namely: i) the need for making ADR available where they do not exist (option 3 under paragraph 1); ii) the need for information to consumers by traders (option 3 under paragraph 2); and iii) the need for ADR schemes to respect some core principles (option 2 under paragraph 3).

Other options were analysed and discarded in Annex VI. This concerns in particular the options on sector-specific legislation on ADR (option 2 under paragraph 1) and on creating an EU Ombudsman for all consumer disputes (option 4 under paragraph 1).

Policy options that require ADR to become mandatory are also discarded from the analysis.

Firstly, imposing a mandatory system of Alternative Dispute Resolution that would introduce an additional step for access to the courts in all Member States could raise serious concerns regarding the compliance with the Right to an effective remedy (Article 47 of the Charter of Fundamental Rights).

Secondly, making ADR mandatory for businesses can be twofold: i) making their participation in the ADR scheme obligatory or ii) making the outcome of the ADR scheme binding for them. Either option would run against the voluntary nature of ADR. In addition, if such option is prescribed at EU level, it could interfere deeply with the different forms of existing ADR schemes, thus affecting their flexible nature.

In addition, the need to preserve the voluntary choice of parties to turn to ADR was also highlighted by the majority of stakeholders during the consultation and the studies conducted. All business representatives, as for example Business Europe and MEDEF, support strongly that ADR should remain voluntary. In addition, only three of the Member States that replied to the public consultation said that ADR should be made mandatory. A number of consumer organisations such as the National Institutes for consumer protection in Spain, France and

Lithuania supported the same position, while BEUC stressed that ADR should not be made mandatory for consumers.

Therefore none of the policy options below requires mandatory ADR for businesses but they neither prohibit Member States to require it.

However, the flexibility and voluntary nature of ADR can however weaken the efficiency of ADR for consumers, when businesses refuse to engage in the ADR procedure, leaving consumers with their problem unresolved. It is therefore important to create incentives for businesses to engage in the ADR process. These incentives should be also linked to an effective monitoring system, including on traders refusing to engage in ADR. This system exists in some Member States (i.e. Denmark) and has proved to be effective.

The policy options retained are presented in the table below.

Option 1	No EU action (baseline scenario)
Option 2	Non-binding legal instrument to encourage the development of quality ADR schemes for all domestic and cross-border consumer disputes, to encourage businesses to provide consumers with information on the ADR scheme competent to deal with their dispute and to encourage ADR schemes to participate in existing EU sector-specific ADR networks.
Option 3	Binding legal instrument to ensure that consumers can refer all their domestic and cross-border disputes to quality ADR schemes, covering also online services; that consumers receive information on the ADR scheme competent to deal with their dispute; and that ADR schemes participate in existing EU sector-specific ADR networks.
Option 4	Binding legal instrument to establish an EU model for quality national ADR schemes to cover all domestic and cross-border consumer disputes, including in relation to online purchases. This legal instrument will also ensure that consumers receive information on the ADR scheme competent to deal with their dispute and that EU networks of sector-specific ADR schemes are created.

Policy Option 1

No action at EU level will be taken to further promote the development of ADR in the EU. According to this baseline scenario, the resolution of domestic and cross-border consumer disputes through ADR will rely on the current *status quo* in the EU. The two Commission Recommendations will continue to provide in a non-binding way the quality principles that ADR schemes should respect. Member States will notify to the European Commission the ADR schemes that they consider in conformity with the Recommendations. The ADR provisions included in EU sectoral legislation will continue to apply and might be better implemented by Member States. The ECC network and FIN-NET will continue assisting consumers in cross-border cases.

Policy Option 2

The second policy option provides for a Recommendation to encourage the development of quality ADR schemes for all domestic and cross-border consumer disputes in the Member States in the sectors where no ADR scheme exists. In order to promote quality, it will be recommended that the ADR schemes adhere to the principles of transparency, impartiality and effectiveness. In addition, national ADR schemes will be encouraged to participate in EU existing networks of ADR (for example FIN-NET) to facilitate the resolution of cross-border disputes.

Finally, businesses that sell goods and provide services to consumers will be encouraged to develop self-regulatory codes of conduct to inform consumers about the competent ADR scheme to deal with their disputes.

Policy Option 3

The third policy option consists of a framework Directive. It will require Member States to make ADR available for all domestic and cross-border consumer disputes (covering all retail business sectors and territory). This option requires full ADR coverage for all consumer complaints but it does not predefine how to fill the existing gaps. It is up to Member States to find the most appropriate way to ensure full coverage. The diversity of existing ADR schemes across the EU (regarding the funding structures, the geographical coverage, the sectoral or cross-sectoral coverage and the nature of the ADR and its decisions) will be respected. It will be left to Member States to decide how to make ADR available. This could be achieved by creating cross-sectoral single ADR schemes (e.g. as the Ombudsman in Greece, the Consumer Complaints Board in Sweden or in Estonia), umbrella schemes consisting of different sectoral boards (e.g. Netherlands) or by creating separate ADR schemes for each sector. The funding of these schemes (public, private or combination of both) will be also in the hands of Member States to decide. Existing ADR schemes will remain but in order to ensure quality, they will have to respect the principles of transparency, impartiality and effectiveness, as described under Chapter 6. They will also have to be able to deal with disputes online. Therefore, the existing ADR schemes that do not respect the quality principles or do not offer services online and across-borders will have to be adjusted.

While option 3 does not interfere with the non mandatory nature of ADR, incentives will be created to encourage businesses to participate in the ADR process. These incentives could consist for example in monitoring the level of businesses' engagement in the ADR proceedings and providing businesses that participate in ADR with a trust-mark. This will be in line with the Charter of Fundamental Rights, in particular concerning protection of personal data (Article 8) and respect for private and family life (Article 7)¹¹². The Commission will also monitor the functioning of ADR on the basis of regular reporting from Member States, which will include relevant information on ADR (such as persisting gaps in ADR coverage and data on the number of ADR cases).

Furthermore, national ADR schemes will be required to become members of existing EU ADR networks to facilitate the resolution of cross-border disputes (for example FIN-NET)

¹¹² See Annex VIII

Finally, all businesses that sell goods and provide services to consumers will be obliged to provide consumers with information on the ADR scheme competent to deal with their dispute. Businesses will provide this information in their contracts and commercial documents and at the point of sale.

Policy Option 4

Under the fourth policy option a Directive will establish a standard EU ADR model for national schemes covering all domestic and cross-border consumer disputes, including online. According to this model, an entity, designated following an agreement between business and consumer representatives, will make a recommendation on the dispute. The procedure will be free of charge for consumers. Businesses will have to participate in the funding of the scheme (e.g. through a levy or a case fee). In the sectors where no ADR exists, ADR schemes will have to be made available according to the model. Existing ADR schemes will have to be adapted to this model. In order to ensure quality, this model will also require that ADR schemes will have to comply with the principles of transparency, impartiality and effectiveness.

The Commission will also monitor the functioning of ADR on the basis of regular reporting from Member States, which will include relevant information on ADR (such as persisting gaps in ADR coverage and data on the number of ADR cases).

In addition, sector-specific networks of ADR schemes will be created at EU level; national ADR schemes will be required to become members of these networks to facilitate the resolution of cross-border disputes in the relevant areas.

Finally, all businesses that sell goods and provide services to consumers will be obliged to provide consumers with information on the ADR scheme competent to deal with their dispute. Businesses will provide this information in their contracts and commercial documents and at the point of sale.

7.1.1. Analysis of impact

7.1.1.1. Assessment criteria

Each policy option is assessed against a set of criteria related to benefits and costs. They are explained in more detail below.

Analysis of benefits

- Impact on the share of unresolved consumer disputes: this criterion assesses whether more consumer disputes with businesses will be resolved through ADR as a result of each option.
- Impact on ADR coverage of all retail market sectors and EU territory: this criterion assesses the degree of coverage by ADR schemes for all retail market sectors and all EU territory.
- Impact on consumers' awareness of ADR: this criterion assesses the levels of consumers' knowledge about ADR as a result of each given policy option.

- Impact on adherence to the core principles of impartiality, transparency and effectiveness by ADR schemes: this criterion assesses whether existing and newly created ADR schemes will operate in an impartial, independent and effective manner as a result of each policy option.
- Impact on consumers' and businesses confidence in using ADR: this criterion assesses whether each policy option will encourage consumers and businesses to make greater use of ADR to solve their disputes.
- Time needed to achieve the objectives: this criterion assesses how quickly the objectives of having quality ADR schemes in all sectors and raising consumers' awareness on ADR will be met.

Analysis of costs

- Implementation costs: this criterion assesses the costs required to put in place the actions envisaged by each policy option, excluding costs related to the provision of information.
- Administrative costs: this criterion assesses the costs that will be incurred by businesses and public authorities in order to comply with the information obligation created by each policy option.

7.1.1.2. Assessment of options

The options are rated according to their impact. Policy option 1(baseline scenario) is set to zero and the impacts of the rest of the policy options are expressed as net changes compared to it. The symbol (-) is used to rate the costs while the symbol (+) to rate the benefits. They are explained as follows:

- --- : significantly expensive
- --: expensive
- -: slightly expensive
- 0: baseline scenario
- +: slightly positive effect
- ++: positive effect
- +++ significantly positive effect

Policy Option 1

Benefits

Criteria	Effect: slightly positive to significantly positive	Explanation of impact
Impact on the share of unresolved consumer disputes	0	The share of unresolved consumer disputes will remain at the current levels. Consumers will not be able to solve all their disputes through ADR and will continue suffering losses in the internal market as a result of purchased goods and services. A better implementation of the current ADR clauses, included in sector-specific legislation, and a wider respect of the Commission Recommendations may bring marginal effects.
Impact on ADR coverage of all business retail market sectors and EU territory	0	Gaps in the ADR geographical and sectoral coverage will remain. It will not be possible for all consumer disputes to be solved out of court. For some consumer claims, referral to court will remain the only available means of redress. The number of ADR cases will not show any significant increase. Differences in the ADR coverage between the retail market sectors will continue to exist. Consumers will not be able to turn to an ADR scheme to solve all their disputes but only in a limited number of sectors, mainly where there is an obligation by EU (e.g. consumer credit) or national legislation (e.g. financial services in the UK).
Impact on consumers awareness of ADR	0	Consumers' awareness about the existence of ADR schemes will remain low. They will continue to enjoy different levels of access to information regarding ADR schemes due to different obligations on traders and different central points of information. This will not allow consumers to learn about ADR and get clear information on the procedures used in order to familiarise themselves with ADR.
Impact on adherence to the core principles of impartiality, transparency and effectiveness by ADR schemes	0	The number of ADR schemes that respect the core principles of impartiality, transparency and effectiveness will not change substantially. ADR schemes will adhere to these principles on a voluntary basis. The respect of these principles can be particularly problematic when ADR is funded by one of the parties (e.g. by businesses).
Impact on consumers' and businesses confidence in using ADR	0	Consumers' and businesses' confidence in using ADR will not improve. Gaps in coverage, low awareness' levels and potentially questionable methods of functioning will discourage them from using it more often. Businesses and especially consumers will not trust ADR schemes to solve their problems as they might think that their decisions are biased or that the procedure is long and complicated.
Time needed to achieve the specific objectives	0	It is unlikely that the objectives will be achieved. The time needed will depend on the implementation of ADR clauses included in the sector-specific legislation or on national developments. Judging by developments until now, it is doubtful whether a full coverage of quality ADR schemes and a substantial increase in awareness' levels will be achieved.

Costs

Criteria	Effect: slightly expensive to significantly	Explanation of impact
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	expensive	
Implementation costs	0	No implementation costs are expected as a result of this option with the exception of those Member States that decide to set up ADR schemes as a result of the existing sector-specific EU legislation.
Administrative costs	0	No administrative costs will be incurred.

The first policy option will not have an impact on consumers and businesses.

The current situation of scattered ADR coverage will not change and consumers will still face difficulties in finding a competent ADR to deal with their dispute either domestically or in cross-border cases. Therefore their problems, accounting for 0.4% of EU GDP, will remain unresolved.

The situation may progress positively for consumers if the ADR clauses included in EU legislation are implemented. However, most EU Directives *encourage* Member States to develop ADR and from those that *oblige* them very few are currently implemented. The ECC-network will continue helping consumers in cross-border cases but it will still face difficulties in transferring consumer disputes due the lack of ADR schemes.

In addition, the quality of ADR schemes will not improve; some ADR schemes will continue to function in an unsatisfactory way not always being transparent, impartial or effective. As a result, the time and costs that consumers spend in order to solve their disputes will not be improved and consumers will thus be discouraged from seeking ways to solve their problem and be compensated. Furthermore consumers will not receive the necessary information they need about ADR schemes competent to deal with the disputes with traders. Thus the levels of consumers' awareness will remain low; currently almost one third of EU consumers does not know who to turn to if they face a problem with a purchased good or service.

Businesses will not suffer any costs as a result of this option. However, the lack of ADR schemes will also make it difficult for businesses to use ADR. For example, 18% of businesses wanted to use ADR but it was not available¹¹³. In addition, as consumers, businesses will be deprived of quick and less expensive procedures to solve their disputes with consumers.

Finally, this option will have no impact on Member States or on the EU budget.

Policy Option 2

Benefits

Criteria	Effect: slightly positive to significantly	Explanation of impact

¹¹³ European Business Test Panel, 2011, http://ec.europa.eu/yourvoice/ebtp/consultations/2010/adr/index_en.htm

	positive	
Impact on the share of unresolved consumer disputes	+ / ++	The impact on the share of unresolved consumer disputes will be limited. The share of these disputes is not likely to decrease substantially. Consumers and businesses will thus be left with their problems unresolved and continue suffering losses to a large extent.
Impact on ADR coverage of all business retail market sectors and EU territory	+ / ++	Some gaps that currently exist in retail market sectors and geographical areas might be filled. Action will be taken on a purely voluntary basis and there is therefore no guarantee that all sectors of the retail market economy will be covered. Some sectors will still remain without ADR schemes in place competent to deal with consumers' disputes.
Impact on consumers' awareness of ADR	+ / ++	Consumer awareness on ADR is not likely to increase. This largely depends on how proactive businesses will be in developing self-regulatory codes of conduct to inform consumers about the competent ADR schemes to deal with their disputes.
Impact on adherence to the core principles of impartiality, transparency and effectiveness by ADR schemes	+	The situation is unlikely to change substantially as there will be no added value to the existing two Recommendations.
Impact on consumers' and businesses' confidence in using ADR	+	Consumers' and businesses' confidence might increase marginally. Due to the uncertainty of ADR coverage in the various sectors of the economy and the lack of guidance from Member States as to the principles to be followed by ADR schemes, this option will probably not have a significant impact on consumer and business confidence.
Time needed to achieve the specific objectives	+	The objectives might be achieved in the long run. The timing largely depends on how proactive Member States or businesses are in setting up ADR schemes and on the willingness of traders to develop self-regulatory codes of conduct to provide information.

Costs

Criteria	Effect: slightly expensive to significantly expensive	Explanation of impact
Implementation costs	- / - - -	Implementation costs will range from low to significantly expensive depending on whether Member States follow the European Commission's Recommendation.
Administrative costs	- / - - -	Some administrative costs will fall on businesses if they decide to develop and apply self-regulation for the provision of information to consumers. .

Policy option 2 may have some impact on consumers as a result of the Recommendation and self-regulatory initiatives by businesses. However, this will probably be marginal due to the voluntary nature of the encouragement. Consumers will still face difficulties in finding quality ADR schemes competent to deal with their disputes, either domestically or in cross-border cases, as gaps in some sectors will remain. The ECC-network will continue helping

consumers in cross-border cases but it will still face difficulties in transferring consumer disputes due the lack of ADR schemes. The time and costs to solve consumer disputes will not be substantially improved. Additionally, the provision of information to consumers by traders will be voluntary. Therefore, consumer awareness levels are more likely to remain low. Consumers will not be able to profit from the potential savings of €20 billion in the internal market.

Businesses will be affected by this option only if they decide to adopt and comply with self-regulatory codes. In that case, they will have to bear the costs of modifying their commercial documents to provide information to consumers, accounting to about €771 million for all EU businesses (€254 per business)¹¹⁴. In addition, businesses will not be able to easily solve their disputes with consumers in a cost-efficient manner that will further help them enhance their relationship with their customers. This option will have no impact neither on Member States nor on the EU budget.

It should be noted that two Recommendations on ADR already exist. A third non-binding instrument is likely to bring little added value to address the current shortcomings in ADR.

A significant number of stakeholders pointed out that non-binding measures are not effective. For example, BEUC clearly stated that the principles of quality consumer ADR should be included in a binding instrument. In addition, stakeholders supported action at Union level to strengthen consumer ADR schemes. Business Europe called for efforts to be devoted to further promote and improve ADR for all consumer disputes throughout the EU territory.

Finally, this policy option would have a positive impact on Consumer protection (Article 38 of the Charter of Fundamental Rights), if Member States introduced quality ADR schemes into legislation or improved the existing ADR schemes in line with the EU Recommendation.¹¹⁵

Policy option 3

Benefits

Criteria	Effect: slightly positive to significantly positive	Explanation of impact
Impact on the share of unresolved consumer disputes	+ + +	All consumer disputes will potentially be solved. Consumers and businesses will be able to turn to quality ADR for their disputes in all retail market sectors, find a solution and be compensated. Consumers will therefore suffer low or no losses following the purchases of goods and services.

¹¹⁴ Study on the "assessment of compliance costs and administrative costs/burdens on businesses linked to the use of alternative dispute resolution" (hereafter ADR costs study). See Annex VII for calculation of costs.

¹¹⁵ See Annex VIII for a detailed assessment of impacts on fundamental rights.

Impact on ADR coverage of all business retail market sectors and EU territory	+++	All gaps in ADR sectoral and geographical coverage will be filled. ADR schemes will be available in all business sectors for problems that consumers may face. As a result, a big part of consumers' loss will be significantly reduced and money re-allocated to growth.
Impact on consumers' awareness of ADR	+++	Consumer awareness on ADR will significantly increase. Informing consumers at the point of sale and on contracts and commercial documents about the competent ADR schemes will undoubtedly make them more aware of their options. Central information databases will also help to that end.
Impact on adherence to the core principles of impartiality, transparency and effectiveness by ADR schemes	+++	All ADR schemes will be bound to respect the core principles of impartiality, transparency and effectiveness. This will result in enhancing the high quality of ADR schemes across the EU.
Impact on consumers' and businesses confidence in using ADR	+++	The existence of quality ADR schemes in all sectors of the economy will make consumers and businesses more confident to use ADR. The information that will be made available concerning ADR schemes will have a positive impact on the increase of consumers and businesses that use ADR to solve their disputes.
Time needed to achieve the specific objectives	+++	The objectives will be achieved once the legislation is implemented. The time needed is estimated to about 2 years.

Costs

Criteria	Effect: slightly expensive to significantly expensive	Explanation of impact
Implementation costs	--	Implementation costs will be incurred. Member States or others (e.g. businesses) will have to set up or make available ADR schemes in sectors of the economy where none exists.
Administrative costs	---	Administrative costs will occur for businesses since they will have to include, on their contracts and commercial documents, information about ADR schemes competent to resolve consumer disputes. Additionally, some administrative costs may be incurred by Member States to report on the quality of ADR schemes (if not already done).

Policy option 3 will have a positive impact on consumers who will be able to turn to an ADR scheme for all domestic or cross-border problems with purchased goods and services in every sector of the economy. In addition, participation of national ADR schemes in EU networks will further facilitate the resolution of cross-border problems and provide practical assistance to consumers in case they want to refer their case to the ADR scheme of another Member State. For example, if a consumer in one country has a dispute with a financial services provider from another country, FIN-NET members will put the consumer in touch with the relevant out-of court dispute scheme and provide the necessary information about it.

Consumers will thus be more likely to seek redress through ADR knowing that they can rely on the assistance of the network. Similarly, the ECC network will be able to transfer all consumer cross-border disputes to ADR schemes of another Member State. As a result, more consumer problems will be raised and solved, thus leading to a reduction in consumers' losses. Consumers' savings as a result of quality ADR coverage will be significant (estimated to €20 billion¹¹⁶). In addition, the savings by EU consumers related only to cross-border shopping is between €500 million and €1 billion. These savings can then be reallocated in the internal market.

Even though it is not possible to give representative figures to provide an indication of realised benefits some examples from existing ADR schemes clearly demonstrate the potential benefits for consumers. For example, through the intervention of ECC a Belgian consumer received compensation from a Spanish company of €1.044. Similarly a Finnish consumer received compensation of €364 from a German trader and an Irish consumer was reimbursed €1.766 from a Dutch airline. Regarding domestic cases, the average compensation to consumers by cases submitted to the Financial Services Ombudsman in the UK is £1000 / €1150 per complaint and the total amount is estimated to £165m / €188m for 2010/2011.

Furthermore, consumers will have all the required information regarding competent ADR schemes should they choose to resolve their dispute out-of-court, since traders will be obliged to provide the necessary information to consumers at the point of sale and also on their commercial documents. Consumer organisations (e.g. BEUC, Altroconsumo in Italy, the Consumer Protection Board of Estonia, UFC Que Choisir in France) thought that information on ADR at the pre-contractual, contractual and post-sales phase is crucial for consumers.

Consumers will therefore feel better equipped and more empowered to turn to an ADR scheme. By ensuring the existence of quality ADR schemes they will be reassured that these schemes will deal with their dispute quickly, with no or low costs and with no complications, while the entity taking the decision will be impartial. This will boost their confidence and allow them to turn more frequently to ADR to solve their disputes with traders.

The monetary impact on businesses linked to the objective of full coverage of ADR schemes depends on how each Member State will decide to fulfil this obligation, in particular the type of ADR schemes that will be established, and on the nature its funding.

The costs of setting up and running¹¹⁷ an ADR scheme vary depending¹¹⁷ on its scope of application, namely the sector and the size of the territory that it covers. Some ADR schemes function with an annual budget of about €100.000 while others need more than €1 million¹¹⁸. This figure is based on the calculations of existing ADR schemes. It is not possible to provide one single, representative figure for all the ADR schemes of all Member States due to the unique character of every ADR. The following examples describe the range of costs relating

¹¹⁶ The methodology used to calculate this number (as explained in Annex II) does not allow providing a range of benefits instead of the average amount.

¹¹⁷ The costs related to the setting up and running of ADR schemes includes to a large extent similar expenses (salary, rental of offices, etc.); the only difference is the one-off cost incurred for the purchase of equipment (office and IT equipment). Most ADR schemes consulted were not able to provide separate figures for the costs related to their setting up and their running. Therefore the data provided in the relevant table in this paragraph includes both.

¹¹⁸ Internal DG SANCO research on the annual budgets of ADR schemes in the EU.

to various configurations of ADR schemes (general, sector-specific, local) in different Member States.

Name of ADR scheme	Disputes covered	Geographical coverage	Setting up / running costs
Financial Services Ombudsman	Financial services (165.000 disputes)	United Kingdom	£6 million (running cost for 2010)
"Médiateur des Communications électroniques"	Electronic communications (3,300 disputes in 2010)	France	€ 1 million (running cost for 2010)
Chamber of Commerce of Milan	All disputes (417 disputes in 2010)	Italy	€ 200.000 (estimation of running cost for 2010 including the online procedure provided by 'Risolvionline.com')
Consumer Complaints Board	All disputes (3.226 disputes in 2010)	Denmark	€ 3.2 million (running costs for 2010)
Consumers Complain Committee	All disputes (300 disputes in 2010)	Estonia	€ 87.500 (annual budget for 2010)
Hellenic Ombudsman	All disputes	Greece	€ 350.000 (set up costs) and € 102.000 (running costs for 2010).
Der Online Schlichter	E-commerce disputes	Germany (two regions)	€ 55.000 (set up costs)
Alternative Dispute Resolution (pilot)	All disputes	Czech Republic	€121.000 (running costs)

However, as indicated above, costs for businesses in relation to the obligation of full coverage are not directly linked to the existing coverage in ADR in the Member State where they are established. Full ADR coverage will not require systematically businesses to create a specific ADR scheme in each retail sector. Member States, in collaboration with businesses or not, may decide instead to create a single or residual cross-sectoral body to 'fill the gaps' in their territory (e.g. Denmark or Greece). This residual cross-sectoral body could be competent when no specific ADR exists. It could be funded either through public or private funds.

In addition, businesses may incur costs due to the adjustment that some of the ADR schemes will need to make in order to adhere to the quality principles. However, the quality ADR principles will substantially reflect the existing framework established by the two Commission recommendations and ADR schemes in the Member States should already function in accordance with them. At present, 40% of the existing schemes are not notified to the Commission either because they do not respect the principles set out in the

Recommendations or because they are not aware of the notification procedure. According to data from the 2009 ADR study (see also table under 3.3), some Member States have a bigger number of non-notified ADR schemes than others as Italy (125), Germany (24) and Poland (21). Assuming that none of the non-notified ADR schemes respects the principles, a maximum of 40% of ADR schemes (288 schemes) will have to make some adjustments to the way they function, should they wish to be considered ADR according to EU law. The costs for this update will depend on the extent to which they have to be modified. For example, some of them already meet the requested standards but have not been notified for various possible reasons (e.g. no awareness of the procedure). Others might need to create a website to meet the transparency principle.

Moreover, businesses will have to comply with the obligation for the provision of information to consumers imposed on them by legislation. Some business representatives underlined that businesses should contribute to spread information about ADR schemes but it should not be an obligation. Other (as MEDEF in France) supported the idea of including information on ADR in commercial documents. Many business representatives warned on the possible costs required by this approach, in particular for small companies. However, the costs of amending the commercial documents and websites to comply with the provisions of the legislation are one-off and have been calculated to approximately €771 million (€254 per business)¹¹⁹. This sum may vary according to the size of the company, the number of personnel they employ, the number of commercial documents they issue after a purchase and whether they run a website or not. Some large enterprises reported that the costs are "not significant" while others stated that it comes up to a bit more than €1000. Some medium-sized enterprises reported a cost of around € 370. For small enterprises it ranged from €455 to € 2000 and for micro enterprises around €270. However, in average terms, there seems to be no major differences in the costs between SMEs and bigger businesses. In fact for some of the SMEs interviewed¹²⁰ these costs seem to be lower for them than for bigger businesses. It should also be considered, as pointed out by some businesses interviewed, that these costs are marginal as the majority of businesses changes their commercial documents and websites regularly (one in six months to up to once every two years) and therefore any changes related to ADR can be easily incorporated in the periodic changes done by businesses.

Furthermore, there will be a positive impact on businesses. They will be able to solve any consumer dispute via quick, low cost and simple out-of-court procedures. The savings for businesses on a yearly basis, if they use ADR instead of court proceedings, can range from € 1.7 billion to € 3 billion, while at the same time saving 258 days. This will encourage them to use ADR in order to find a solution to consumer disputes, thus satisfying their clients and building a good business reputation. This also helps them gain competitive advantage compared to other businesses that do not use ADR or, vice versa, not to lose competitive advantage compared to those that already use ADR.

Member States will also be affected in so far as they will need to set up and run the ADR schemes. The costs will be as explained above for businesses. However, the obligation of ensuring that all consumer disputes can be referred to ADR (i.e. full coverage), does not imply that Member States have to set up separate ADR schemes for each market sector. Some Member States will be more affected by these implementation costs, as ADR does not exist or

¹¹⁹ ADR costs study, see Annex VII

¹²⁰ 22 businesses have been interviewed for the ADR costs study (Annex VII). 16 were large enterprises, 2 were medium sized enterprises, 2 were small enterprises and 2 were micro enterprises.

is underdeveloped (Slovenia, Slovakia, Ireland, Italy, Cyprus, Poland, Romania). To meet this obligation, they have the possibility to establish one ADR covering all consumer disputes in all sectors. Those Member States that have some sector-specific or regional ADR schemes (Ireland, Italy, Cyprus, Poland, Romania, Belgium, Bulgaria, Czech Republic, Germany, Spain, France, Luxemburg, Hungary, Austria, Portugal, UK), have a number of options to ensure full coverage. For example, they can create separate ADR schemes for the sectors that are not already covered; they can create one ADR scheme for the sectors that are not already covered; they can create an umbrella ADR scheme, encompassing the existing schemes and acting as the ADR for the rest of the uncovered sectors. In addition, the notification of existing –but not notified- ADR schemes should be taken into account for the obligation of ensuring full coverage of ADR. As a result, the costs incurred by Member States will depend on the way they choose to meet the obligation of full coverage. Nine Member States (Denmark, Estonia, Greece, Latvia, Lithuania, Malta, Netherlands, Finland and Sweden) seem to ensure already full coverage and therefore they will not incur any costs regarding this obligation.

Member States will also be burdened with limited costs for reporting on the development of ADR schemes (persisting gaps, data on the number of ADR cases, level of businesses' engagement). All Member States already have a structure to notify to the European Commission the ADR schemes, which comply with the two Commission Recommendations. In addition, some of them already have authorities to monitor and report on ADR schemes. For example in Italy, the Ministry of Justice and “Unioncamere” (both public entities) monitor the ADR proceedings and collect data. In France, public authorities, such as the sectoral regulator bodies (e.g. on telecoms) and the competition authority have monitoring competences. In the UK, the Financial Services Authority monitors the relevant Ombudsman.

The participation of national ADR in EU-wide ADR networks is key for the resolution of cross-border disputes. At present the only existing network is FIN-Net, which is built on what exists in the Member States and does not impose a specific structure for the national ADR system. Thus it does not entail specific costs for ADR schemes.

This option will have no impact on the EU budget. Finally, this option would have a positive impact on consumer protection (Article 38 of the Charter of Fundamental Rights) as it would mandate the Member States to provide the consumers with a possibility to refer all their domestic and cross-border disputes to quality ADR schemes.¹²¹

Policy Option 4

Benefits

Criteria	Effect: slightly positive to significantly positive	Explanation of impact
Impact on the share of unresolved consumer disputes	+ + /+ + +	Consumers will be able to turn to quality ADR for their disputes in all retail market sectors, find a solution and be compensated. Although all consumer disputes could potentially be solved, consumers and

¹²¹ See Annex VIII for a detailed assessment of impacts on fundamental rights.

		businesses could have, at least during an initial period, difficulties in adapting to a new EU ADR model. Consumers will therefore suffer some losses as a result of goods and services they purchased.
Impact on ADR coverage of all business retail market sectors and EU territory	+++	Gaps in ADR coverage will be filled by introducing or making available in all sectors new schemes reflecting the EU ADR model. Quality ADR schemes will exist for all sectors and consumers will be able to turn to ADR for all their disputes.
Impact on consumers' awareness of ADR	+++	Consumers' awareness about the existence of ADR schemes will increase substantially, as described for policy option 3.
Impact on adherence to the core principles of impartiality, transparency and effectiveness by ADR schemes	+++	All ADR schemes will respect the core principles of impartiality, transparency and effectiveness. An obligation to adhere to these three principles will be imposed on all ADR schemes. This will result in high quality ADR schemes across the EU.
Impact on consumers' and businesses confidence in using ADR	++	The introduction of a new EU ADR model to replace well-functioning ADR scheme in Member States might decrease consumers' and businesses' confidence. In cases where well-functioning ADR schemes were in place, consumers and businesses could have difficulties in understanding the reason of the change and adapt to it. This could lead, at least during an initial period, to the new schemes being rejected. On the other side, consumers and businesses will benefit from the use of ADR, where it did not exist.
Time needed to achieve the specific objectives	++	The objectives will be achieved once the legislation is implemented. The time needed is estimated to about 5 years, because of the difficulties of dismantling existing systems in order to adjust to the standard model.

Costs

Criteria	Effect: slightly expensive to significantly expensive	Explanation of impact
Implementation costs	---	Implementation costs will occur. ADR schemes will have to be created or made available in those sectors where they do not exist, as described in policy option 3. Moreover, additional costs will be incurred to adapt the existing ADR schemes so as correspond to the standard ADR model.
Administrative costs	---	Administrative costs will occur for all businesses and Member States, as described in policy option 3

The fourth policy option will have a positive impact on consumers who will be able to turn to ADR for domestic or cross-border problems with purchased goods and services irrespective of the sector of the economy. In addition, participation of national ADR schemes in EU networks will further facilitate the resolution of cross-border problems and provide practical assistance to consumers in case they want to refer their case to an ADR scheme of another Member State. Likewise, the ECC network will be able to transfer all consumer cross-border

disputes to ADR schemes of another Member State. As a result, more consumers' problems will be raised and solved via quality ADR, thus leading to a reduction in consumer losses.

The monetary impact on businesses will be high. The costs stemming from putting in place ADR schemes and providing information will be as described under option 3. Moreover, businesses will incur further additional costs, as they will be obliged to participate in the funding of ADR schemes. In addition, more costs for them will also occur in those cases where they already fund schemes, in order to adjust them substantially to the prescribed EU model.

Member States will be greatly affected since not only they will need to fill the gaps in ADR coverage according to the new EU model, but they will also need to substantially modify existing ADR schemes according to the EU model.

A possible initial reluctance to use a "new" scheme, where there was already a well-functioning mechanism should also be taken into account. This will be the case also for businesses that are already part of functioning schemes. Furthermore, this option would be clearly opposed by Member States that have stressed both in the replies to the public consultation and in bilateral meetings with Commission services the need to preserve well-functioning national systems and to build on what exists.

This option will have a significant impact on the EU budget. The EU will need to create ADR networks for all retail market sectors. For example, FIN-NET, having 52 members from 20 EU Member States and 3 EEA countries, has an annual cost of €35.000 for the organisation of four meetings per year together with some personnel costs from the European public administration (about ¼ of an Administrator and 1/5 of an Assistant).

All stakeholders opposed the idea of an EU model for ADR schemes and favoured the versatile nature of ADR. For example, Business Europe said that the "The diversity and adaptability of existing ADR systems should be preserved. A one-size fit all solution would be incompatible with the adaptability needed for the well functioning of an ADR system". The need to take into full account the ADR mechanisms already operating in some sectors or territories of the EU was underlined by the majority of consumers (e.g. Altroconsumo -IT, the Financial Services User Panel -UK).

Finally, this option would have a positive impact on consumer protection (Article 38 of the Charter of Fundamental Rights) as it would mandate the Member States to provide the consumers with a possibility to refer all their domestic and cross-border disputes to quality ADR schemes, according to the standard EU ADR model.¹²²

7.1.1.3. Comparison of options

Benefits

Policy Options/ Criteria	Policy Option 1	Policy Option 2	Policy Option 3	Policy Option 4
Impact on the share of unresolved	0	+ / ++	+++	++ / +++

¹²² See Annex VIII for a detailed assessment of impacts on fundamental rights.

consumer disputes				
Coverage of all business sectors by ADR	0	+ / ++	+++	+++
Increase in consumers' awareness on ADR	0	+ / ++	+++	+++
Increase in the number of ADR schemes that respect the core principles of impartiality, transparency and effectiveness	0	+	+++	+++
Boosting consumers' and businesses' confidence in using ADR	0	+	+++	++
Time needed to achieve the objectives	0	+	+++	++

Costs

Policy Options/ Criteria	Policy Option 1	Policy Option 2	Policy Option 3	Policy Option 4
Implementation costs	0	- / ---	--	---
Administrative costs	0	- / ---	---	---

Policy option 1 might not have any budgetary impact but it will not reach any of the objectives set.

Similarly, policy option 2 will hardly bring about the desirable results, due to the nature of the non-binding instrument.

Policy option 3 will achieve coverage of quality ADR and raise consumers' awareness, while decreasing the number of unresolved consumer disputes and the losses suffered as a result of purchased goods and services. It will also imply costs for setting up ADR schemes and for businesses to provide information.

Finally, option 4 can be effective as option 3. However, it can affect negatively consumers' and businesses' confidence at least for an initial period, and will impose higher costs for

adapting all national ADR schemes to an EU model and creating EU ADR networks for all retail market sectors.

A table comparing the options in monetary terms can be found in Annex IX.

7.2. Policy options for ODR for cross border e-commerce transactions

In order to ensure that consumers are more confident in buying online from another Member State and businesses more confident in selling online in another Member State an online dispute resolution system for cross-border transactions conducted on the internet is considered necessary. This would promote e-commerce and contribute to the achievement of the *Digital Agenda*. Different policy options related to the online dispute resolution for cross-border e-commerce transactions are examined.

Imposing a mandatory system of Online Dispute Resolution that would introduce an additional step for access to the courts in all Member States would raise serious concerns regarding the compliance with the Right to an effective remedy (Article 47 of the Charter of Fundamental Rights) and was discarded from the analysis.

Option 1	No EU action (baseline scenario)
Option 2	Non-binding legal instrument to connect national ADR schemes dealing with cross-border e-commerce disputes online in a EU network.
Option 3	Binding legal instrument to establish a EU system , consisting of a web-based platform directly accessible by consumers, which will be based on national ADR schemes and will be able to deal with cross-border e-commerce disputes online (ODR); and to define common criteria for the functioning of the web-based platform.
Option 4	Binding legal instrument to create a single EU body dealing with all cross-border e-commerce disputes online.

Policy Option 1

This option entails taking no action at EU level for disputes linked to cross-border e-commerce purchases between a consumer and a trader. This baseline scenario foresees that existing national ADR schemes offering an online procedure will continue to deal with these disputes. Any further development will depend on measures taken at national level, including the development of the online dimension of ADR schemes. In case of cross-border purchases, the ECC network will continue to refer related disputes to competent national ADR schemes offering an online procedure, if available.

Policy Option 2

This option entails a Recommendation encouraging Member States to make available ADR schemes offering an online procedure to deal with any consumer dispute linked to cross-border e-commerce purchases. Member States can achieve that either by setting up specialised ADR schemes that deal online with cross-border e-commerce disputes or by adjusting existing ADR schemes to deal with such disputes online. For these disputes, consumers will contact firstly their national ADR scheme. The latter will liaise with its counterpart in the

Member State of the trader. The contact between national ADR schemes will take place through a EU network financed by the EU.

Policy Option 3

This option entails a Regulation creating a EU system, which will consist of a web-based platform directly accessible by consumers and businesses; they will be able to submit to the EU web-based platform any dispute related to the cross-border e-commerce sale of goods and provision of services by traders to consumers. Standard forms will be available on the EU web-based platform for the submission of disputes. The platform will direct electronically the dispute to the competent national ADR scheme to deal with it online. National ADR schemes will be able to deal online with any cross-border e-commerce dispute that will be transmitted to them via the platform.

This option will establish common criteria that will have to be applied by the national ADR schemes when dealing with the cross-border online disputes. The common criteria will include: i) "*modus operandi*" of the web-based platform accessible to all EU consumers and business (e.g. standard forms, use of languages, technical specifications for interconnection with national ADR schemes, etc.); ii) common rules applying to the competent ADR scheme when dealing with the cross-border dispute related to e-commerce transactions and received via the EU web-based platform (e.g. timing, eligibility conditions, common procedural aspects prevailing on the procedure foreseen for consumer disputes related to domestic or cross-border offline transactions).

In addition, experts established within the existing structures of the ECC network will facilitate the functioning of the system. The whole procedure will be registered in the EU web-based platform, thus allowing for the monitoring of the resolution of cross-border e-commerce disputes. The web-based platform and any required additional resources for the ECC network will be financed by the EU.

Policy Option 4

This option entails a Regulation establishing a new single ODR body at EU level to deal with disputes related to cross-border e-commerce transactions in all retail market sectors. It will not be linked to national online ADR schemes. This ODR body will be composed of impartial experts appointed by the Member States according to certain eligibility criteria set by the EU. These experts will make recommendations on the disputes. Specific rules to handle the disputes will be established. The ODR body will work through a web-based platform and will be able to operate in all EU languages. When a EU ADR network exists in a specific sector (e.g. FIN-NET) the EU ODR body will prevail for cross-border, e-commerce disputes. Consumers and traders will be able to access the ODR body directly via the web-based platform. The ODR body at EU level and the web-based platform will be financed by the EU.

7.2.1. Analysis of impact

7.2.1.1. Assessment criteria

Each policy option is assessed against a set of criteria related to benefits and costs. They are explained in more detail below.

Analysis of benefits

- Impact on the share of cross border e-commerce consumer disputes dealt with by ODR: This criterion assesses whether the number of e-commerce consumer disputes with traders submitted to ODR will grow.
- Impact on the efficiency of handling cross-border e-commerce disputes: This criterion assesses the impact of the ODR systems put in place in terms of increasing the efficiency of dealing with cross-border e-commerce disputes.
- Time needed to achieve the objectives: this criterion assesses how quickly the objective of an efficient ODR for disputes linked to e-commerce transactions can be achieved.

Analysis of costs

- Implementation costs: this criterion assesses the costs required to put in place the actions envisaged by each policy option.

7.2.1.2. Assessment of options

The options are rated according to their impact. Policy option 1(baseline scenario) is set to zero and the impacts of the rest of the policy options are expressed as net changes compared to it. The symbol (-) is used to rate the costs while the symbol (+) to rate the benefits. They are explained as follows:

- - - - : significantly expensive
- - - : expensive
- - : slightly expensive
- 0 : baseline scenario
- + : slightly positive effect
- + + : positive effect
- + + + : significantly positive effect

Policy Option 1

Benefits

Criteria	Effect: slightly positive to significantly positive	Explanation of impact

Impact on the share of cross border e-commerce consumer disputes dealt with by ODR	0	The share of cross-border e-commerce consumer disputes dealt with by ODR will rely on the existence of ODR schemes at national level. Most cross-border e-commerce disputes will not be solved via ADR as there are many gaps in the ADR coverage. The problems that consumers face will be left unresolved.
Impact on the efficiency of handling cross-border e-commerce disputes	0	The situation will remain largely unchanged. Cross border e-commerce disputes will not be handled more efficiently.
Time needed to achieve the objectives	0	The objectives will not be achieved within a reasonable time frame. In light of the current experience, the development of online ADR schemes at national level will take time and will vary amongst the Member States.

Costs

Criteria	Effect: slightly expensive to significantly expensive	Explanation of impact
Implementation costs	0	No implementation costs will occur.

This option will have very little impact on consumers. It will not improve access of consumers to online out-of-court dispute resolution. The current estimated losses due to the lack of efficient ADR dealing with disputes linked with cross-border e-commerce, amounting to €2,5 billion (0.02% of EU GDP), will remain at the same levels. Consumers will therefore remain reluctant to shop online across borders.

An impact cannot be expected for businesses, in particular SMEs. Their access to online out-of-court dispute resolution will not improve, hence affecting their willingness to sell goods and services online to consumers in other Member States.

The economic impact on businesses, public administration and consumer organisations will depend on the development of national ADR schemes dealing with cross-border e-commerce transactions online. However, currently few such schemes exist in Member States (e.g. ECODIR, Risolvi-Online, Der Online Schlichter).

Finally, this option will have no impact on the EU budget.

Policy Option 2

Benefits

Criteria	Effect: slightly positive to significantly positive	Explanation of impact
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Impact on the share of cross border e-commerce consumer disputes dealt with by ODR	+/+ +	The share of cross-border e-commerce consumer disputes dealt with by ADR may increase. However, this will be subject to Member States providing concrete follow-up to the encouragement to make available ADR schemes offering an online procedure to deal with any consumer dispute linked to cross-border e-commerce purchases
Impact on the efficiency of handling cross-border e-commerce disputes	+/+ +	The efficiency may be increased by the EU network and the similar features of the schemes that will be put in place. However, since the legal instrument is not binding, there is no guarantee that Member States will make available ADR schemes offering an online procedure and thus increasing the efficiency of handling those disputes.
Time needed to achieve the objectives	+	The time needed will be substantial, as it can not be foreseen if and when Member States will follow the Recommendation.

Costs

Criteria	Effect: slightly expensive to significantly expensive	Explanation of impact
Implementation costs	--	The implementation costs will be high for Member States to adjust existing ADR schemes or very high to create new specialised ADR schemes for cross-border e-commerce disputes. Businesses and consumer organisations- depending on their involvement in the development of these specialised ADR schemes- will have to support the implementation costs of new schemes. In addition, it will be necessary to finance at EU level the network linking the national schemes.

Consumers will benefit from the availability of ADR schemes dealing with online cross-border disputes, as they will be able to direct and solve all their disputes online.

Similarly, businesses will have an ADR at their disposal to solve online cross-border disputes with consumers. However, they might incur significant costs should they be required to fund these ADR schemes. The costs will vary according to the size of the Member State and the cases received. For example, some ADR schemes dealing with disputes online (e.g. Risolvi-online in Italy or Der Online Schlichter) have annual running costs of about €100.000 while others (e.g. Mediateur du Net in France or the UK Financial Services Ombudsman) of about €1million.

The economic impact on Member States will be substantial, since they will have to make available or set up and run specialised ADR schemes on online cross-border disputes. The costs will be similar to the ones described in the second paragraph. The EU will also suffer some costs for putting in place an EU network of specialised ADR schemes dealing with cross-border, e-commerce transactions. The annual costs can be estimated to about €50.000-100.000 (judging from other similar networks e.g. FIN-NET).

This option may fulfil the objectives for consumers and businesses only if Member States provide concrete follow-up to the encouragement to make available ADR schemes offering an online procedure to deal with any consumer dispute linked to cross-border e-commerce

transactions. It will, imply costs for the EU and Member States, however without the guarantee of a successful result.

Finally, this policy option would have a positive impact on Consumer protection (Article 38 of the Charter of Fundamental Rights), if Member States made available ADR schemes offering an online procedure to deal with consumer disputes linked to cross-border e-commerce purchases in line with the non-binding legal instrument.¹²³

Policy Option 3

Benefits

Criteria	Effect: slightly positive to significantly positive	Explanation of impact
Impact on the share of cross border e-commerce consumer disputes dealt with by ODR	+++	The number of cross-border e-commerce consumer disputes dealt with online will substantially increase thanks to the EU ODR system. The platform will be accessible directly to consumers and businesses. The full success will rely on the existence of competent ADR schemes that can deal with disputes online at national level.
Impact on the efficiency of handling cross-border e-commerce disputes	+++	The situation will improve substantially. The EU web-based platform will reduce the time needed to handle cross-border e-commerce disputes and to identify the appropriate national ADR scheme. The establishment of common criteria will be instrumental to achieve this objective. In addition, experts within the ECC network, who have already experience in this field, will further improve the efficient handling of these disputes.
Time needed to achieve the objectives	+++	The time needed for the development of the EU web-based platform and for national online ADR schemes to be connected to the platform will be reasonable, estimated to about 2 years.

Costs

Criteria	Effect: slightly expensive to significantly expensive	Explanation of impact
Implementation costs	--	Considering that the web-based platform is based on national schemes, the implementation costs at EU level will be reasonable and proportionate to the objective. The costs for national ADR schemes will be limited to the adjustments needed to be linked to the platform and, for the ECC network, to the additional expertise required.

Consumers and traders will benefit from this option as they will be able to submit to the EU web-based platform any dispute related to the cross-border e-commerce sale of goods and provision of services by traders to consumers. Furthermore, they will be assured that experts established within the ECC network will be there to facilitate the procedure. However, if gaps

¹²³ See Annex VIII for a detailed assessment of impacts on fundamental rights.

in ADR coverage remain at Member State level, competent ADR schemes will not be found to resolve disputes. Conversely, if these gaps are filled the benefits for consumers will be substantial.

Businesses will suffer limited costs, for the adjustment of ADR schemes. These adjustments would aim at: a) connecting electronically all ADR schemes operating in the Member States to the EU web-based platform (no cost); b) ensuring that all ADR schemes apply the common rules (e.g. timing) and procedural elements when dealing with the disputes received by the EU web-based platform (marginal costs). No costs will be incurred to overcome language barriers, taking into account that the ODR Platform will be operational in all official languages of the EU.

Moreover, businesses will be also able to benefit from the web-based platform and solve any cross-border e-commerce disputes that arise with consumers. This will also affect positively the online offer of goods and services across borders.

The EU will bear the costs to develop the EU web-based platform and the expertise required within the ECC network. Taking into account existing ADR schemes dealing with online disputes as well as similar EU IT tools (for example IMI, the ECC network IT tool, the Consumer Protection Cooperation IT tool and the SOLVIT tool), the budget needed for the set up of the web-based platform can be estimated at about €2 million and annual maintenance costs will amount to about €300.000¹²⁴. Some costs will be incurred for enhancing the ECC network, which can be estimated at about €500.000 annually¹²⁵.

The costs for Member States will be limited, as described above for businesses. They would have however to finance by 50% the ECC network enhancement, i.e. adding in total approximately €500.000 annually.

During the public consultations a majority of consumer associations (e.g. Italy's *Altroconsumo*, UK's *Financial Services User Panel*) stressed the importance to boost ODR while taking into full account the ADR mechanisms already operating in some sectors or territories of the EU.

Some Member States and business representatives underlined the importance of using the existing mechanisms to address specific type of contracts and sectors. For instance, Belgium informed about its recently established online referral platform ("Belmed"), which transmits consumer disputes to existing ADR schemes in the country.

This option would have a positive impact on Consumer protection (Article 38 of the Charter of Fundamental Rights) as it would mandate the Member States to establish an EU web-based

¹²⁴ The cost for the initial development of the IMI IT system was €1.417.000, while the annual maintenance costs are approximately €400.000.
The cost for the development of the CPC IT-tool was €1.200.000, while its annual costs amount to €150.000.
The ECC IT-tool costs about €100.000 annually for maintenance, while the SOLVIT one costs €75.000 annually.

¹²⁵ This is an average cost, including all salary related costs (salary, taxes, fees, contributions paid by employer or employee) of the entire ECC network (from Directors to secretaries). The costs will be different for each country and professional grade (for example the lowest salary of a given grade in a given Member State is €7.040/year while the highest is €60.280/year).

system directly accessible by consumers. This option would be in line with the right to the protection of personal data (Article 8 of the Charter). All the necessary steps will be taken to guarantee that personal data, including the ones in the web based platform, will be processed in line with the EU data protection legislation.¹²⁶

Policy Option 4

Benefits

Criteria	Effect: slightly positive to significantly positive	Explanation of impact
Impact on the share of cross border e-commerce consumer disputes dealt with by ODR	+++	The number of cross-border e-commerce consumer disputes dealt with online will increase. All cross-border e-commerce disputes could be handled via a single ODR body at EU level.
Impact on the efficiency of handling cross-border e-commerce disputes	++	Cross-border e-commerce disputes will be handled by a single ODR body at EU level. However, problems of coherence with national online ADR schemes will emerge; in particular their expertise would not be exploited. In addition, the EU ODR body may seem too "far away" for some groups of consumers, especially for the "vulnerable" consumers (elderly people, of low education etc), who would encounter problems in addressing their disputes at this level.
Time needed to achieve the objectives	++	Time will be needed to develop the single ODR body at EU level, estimated to more than 3 years.

Costs

Criteria	Effect: slightly expensive to significantly expensive	Explanation of impact
Implementation costs	---	Implementation costs will be very high for the EU budget that will have to bear the costs of setting up and running a completely new dispute resolution body with exclusive competence to deal with e-commerce cross border disputes of millions of European citizens.

The fourth policy option would affect positively consumers who will be able to turn to the newly created ODR body at EU level for their problems with cross-border purchase of goods and services on the Internet. As a result, more consumers' problems will be raised and solved via quality ODR, thus leading to a reduction in consumer losses.

However, this option entails a risk of incoherence and overlapping with existing national ADR schemes which already provide online dispute resolution services for cross-border e-

¹²⁶ See Annex VIII for a detailed assessment of impacts on fundamental rights.

commerce transactions. In addition, the specific competences acquired within national ADR schemes would be lost. It would be difficult to develop at EU level adequate competence to deal with a high number of cases that are closely related to local realities concerning both consumers and businesses.

Some Member States (BG, IT, PT) would be in favour of a centralised ODR in order to promote and support out-of-court redress means for cross-border e-commerce transactions. However, other Member States (PL and EE) as well as some business representatives (e.g. *German of Federation Industries, Associations Française des Entreprises Privées*) pointed out that a single body dealing with all disputes could lack the specific competence needed to address different types of contracts and sectors.

The monetary impact on the EU budget will be extremely high. The costs for establishing the web-based platform can be estimated to €2million. Considering the experts fees, the technical equipment and personnel costs for the administrative tasks the annual running costs of such an EU body would not be less than € 3 million. It would be difficult to justify those costs, in particular considering that this option would entail creating a new EU body, which would have competences that are partially covered already by national systems.

Finally, it should be noted that this option would have a positive impact on Consumer protection (Article 38 of the Charter of Fundamental Rights), as it would create a single EU body dealing with all cross-border e-commerce disputes online. This option would be in line with the right to the protection of personal data (Article 8 of the Charter). All the necessary steps will be taken to guarantee that personal data, including the ones in the web based platform, will be processed in line with the EU data protection legislation¹²⁷.

¹²⁷ See Annex VIII

7.2.1.3. Comparison of options

Benefits

Policy Options/ Criteria	Policy Option 1	Policy Option 2	Policy Option 3	Policy Option 4
Increase the share of cross-border consumer e-commerce disputes dealt with by ODR	0	+ / ++	+++	+++
Increase the efficiency of handling cross-border e-commerce disputes	0	+ / ++	+++	++
Time needed to achieve the objectives	0	+	+++	++

Costs

Policy Options/ Criteria	Policy Option 1	Policy Option 2	Policy Option 3	Policy Option 4
Implementation costs	0	--	--	---

As shown in the table, policy Option 1 will not incur any costs but it will not meet any of the objectives.

Policy Option 2 could meet the objectives if Member States follow the encouragement to set up the new specialised ADR schemes for online cross-border transactions.

Policy Option 3 will meet fully the objectives if full ADR coverage is achieved, while resulting to proportionate costs. In addition it creates a value added for consumers and businesses by providing them with direct access to an online dispute resolution tool for any dispute related to the cross-border e-commerce sale of goods and provision of services by traders to consumers.

Policy Option 4 will fully meet the objectives, provided that it reaches the appropriate level of expertise and capabilities to deal with a great amount of disputes of different nature; however, its costs will be disproportionate.

A table comparing the options in monetary terms can be found in Annex IX.

8. THE PREFERRED OPTION AND ITS IMPACT

As indicated in Chapter 7, the reason for combining the two sets of policy options goes to the very heart of the general objectives. Only the combination of the two instruments on ADR and ODR can enable access to impartial, transparent and effective means to resolve consumer disputes out-of-court and as a result improve the functioning of the internal market, including its digital dimension, and achieve a high level of consumer protection.

ADR and ODR are directly interlinked and ODR cannot materialise without ADR. If ADR coverage at national level does not improve, it is not possible to develop ODR for cross-border online disputes. The "small sectors" are also crucial in the cross-border and online perspective, as consumers tend to engage in low value transactions when buying in another Member State and over the internet. For example, in 2010, EU consumers who had ordered goods or services via electronic means in other EU countries had spent less than €100 on such purchases¹²⁸, while in 2008 most consumers bought online travel and hotel accommodation, clothes and sport goods and books¹²⁹. Action at EU level to establish ODR without taking into account the ongoing development of ADR in the Member States would be inefficient and objected by the vast majority of stakeholders.

Hence, there is a need for a combined approach to the problem identified in this IA through the analysis of the two sets of policy options on ADR and ODR together.

8.1. Comparison of the two sets of policy options (ADR and ODR)

The tables below provide an assessment of the policy options related to the problem areas against the criteria of effectiveness, efficiency and coherence.

This assessment is carried out using a scale from 0 (least effective, efficient and coherent) to 5 (most effective, efficient and coherent). The combination with the highest ranking represents the most effective, efficient and coherent combination of options.

Effectiveness

Effectiveness	Online Dispute Resolution for cross-border e-commerce transactions			
	Policy Option 1	Policy Option 2	Policy Option 3	Policy Option 4
ADR coverage, information and quality				
Policy Option 1	0	0	0	2
Policy Option 2	1	2	1	2
Policy Option 3	2	3	5	3
Policy Option 4	2	3	5	5

¹²⁸ EB 299, p.21

¹²⁹ Commission Staff Working Document "Report on cross-border e-commerce in the EU", 2009

The "effectiveness" table shows that the non-binding options or a combination of binding and non-binding options cannot achieve the objectives set. The voluntary nature of these options will not result in full quality ADR coverage, an increase in the awareness levels of consumers or in a functioning ODR scheme. They are therefore scored low. The combination of options 3 and 3, 4 and 4 as well as 3 (ODR) and 4 (ADR) can guarantee that the objectives can be fully met and are therefore scored with the highest score.

Efficiency

Efficiency	Online Dispute Resolution for cross-border e-commerce transactions			
ADR coverage, information and quality	Policy Option 1	Policy Option 2	Policy Option 3	Policy Option 4
Policy Option 1	0	2	3	2
Policy Option 2	1	2	2	3
Policy Option 3	2	3	5	4
Policy Option 4	3	3	4	3

The "efficiency" table shows that a combination of the non-binding options could be efficient, only as far as the costs involved are low. However, they cannot meet the objectives and they are therefore scored low. On the other hand, a combination of options 3 and 4 or 4 and 4 are not efficient because even though they will bring results, the costs involved are disproportionate to the achievement of the objectives. It is the combination of options 3 that is scored higher since it meets the objectives with appropriate costs. Further, since option 3 of ODR builds on option 3 of ADR their combination is considered proportionate and efficient.

Coherence

Coherence	Online Dispute Resolution for cross-border e-commerce transactions			
ADR coverage, information and quality	Policy Option 1	Policy Option 2	Policy Option 3	Policy Option 4
Policy Option 1	0	1	2	3
Policy Option 2	1	2	3	3
Policy Option 3	2	3	5	4
Policy Option 4	3	2	4	4

The combination of options 1 or 2 would be coherent with the overarching objectives but not sufficient to the attainment of these objectives. In contrast, a combination of options 3 and 4 or 4 and 4 will not be coherent, since they go beyond the desirable outcomes. A combination of options 3 is therefore considered to be the most consistent and coherent to since they meet the objectives and build on what exists.

8.1.1. Cumulative Assessment of Policy Options

The scores of each combined option in each of the tables under 8.1 are added in the cumulative table below. The final results show the extent to which each combined option is expected to contribute to the policy objectives and its effect on the functioning of the internal market and consumer protection.

Cumulative impact (effectiveness, efficiency and coherence)	Online Dispute Resolution for cross-border e-commerce transactions			
	Policy Option 1	Policy Option 2	Policy Option 3	Policy Option 4
ADR coverage, information and quality				
Policy Option 1	0	3	5	7
Policy Option 2	3	6	6	8
Policy Option 3	6	9	15	11
Policy Option 4	8	8	13	12

From the rating of the table above it can be concluded that the combination of options that entails no EU action will preserve the status quo and therefore the problems that have been identified will not be tackled. Consumers will continue to suffer losses and their confidence in shopping on-line and cross-border will remain low. Although it is the less expensive combination of options it does not meet the set objectives.

The combination of options that foresees the adoption of non-binding legal instruments to tackle the problems identified is neither efficient nor effective. If this combination of options is followed, quality ADR coverage across the EU including the e-commerce cross-border aspect will be left to voluntary actions and therefore cannot be ensured. Consequently, consumers' problems will remain unresolved and losses suffered in the internal market unrecovered. An additional Recommendation is not expected to bring an added value to tackle the current problems.

The combination of options that foresees the adoption of binding legal instrument that require making ADR schemes, which are also able to deal with disputes online, available in sectors of the economy where they do not currently exist (option 3 ADR) will ensure full ADR coverage. As a consequence of the full ADR coverage, the required framework will be created, on the basis of which a EU web-based system can effectively deal with disputes related to cross-border e-commerce transactions (option 3 ODR). This combination of options would therefore represent the most effective and efficient means to improve the way domestic and cross-border disputes are dealt with.

The combination of options that entails a high level of harmonisation in the areas of ADR and ODR (options 4) would provide for a full coverage but would be disproportionate to the objectives of the overall initiative. This has also been confirmed by the replies to the public consultation and the bilateral discussions held by the Commission services with Member

States. Bearing in mind that ADR schemes have been created according to the needs and the standards of each individual Member State the fact that they will have to be adapted in order to correspond to the specifications provided by the standard ADR model will be inefficient and objected by stakeholders and public authorities. The time needed and the resources that will have to be invested are disproportionate to the set objectives and will impose unnecessary burden to the Member States. In addition, creating a single EU ODR body would make ADR schemes that currently exist at national level and deal with disputes online, redundant. Some consumers may be reluctant to use an EU body, which may seem "far-away" to them. Finally, such development does not take into account the national situation and is disproportionate as it implies a strong EU "top-down" intervention that also creates unnecessary costs for the EU.

In conclusion, the objectives pursued can be best achieved through separate instruments which aim, respectively and simultaneously, to a) address the shortcomings in ADR coverage, information and quality services within each Member State for both domestic and cross-border disputes and b) establish a new EU system for ODR specifically devoted to cross-border transactions on the internet.

Therefore, the preferred option is the combination of the two policy options as outlined below¹³⁰:

- (1) A framework Directive to ensure that consumers can refer all their domestic and cross-border disputes to quality ADR schemes, covering also online services; that they receive information on the ADR scheme competent to deal with their dispute and that ADR schemes participate in existing EU sector-specific ADR networks (Option 3). It will be binding to Member States while leaving them the choice of form and methods (how to "fill the gaps"); and
- (2) A Regulation to establish a EU system, consisting of a web-based platform directly accessible by consumers, which will be based on national ADR schemes and will be able to deal with cross-border e-commerce disputes online (ODR); and to define common criteria for the functioning of the web-based platform (Option 3).

The two instruments do not overlap, but are fully complementary. Since the EU ODR system is based on national ADR schemes, it will not be possible to create it and make it function if there is not full coverage of quality ADR throughout the EU territory.

8.2. The impact of the preferred option

The preferred option will make a real difference for **consumers**. They will be able to address all their disputes to an ADR scheme. They will be able to do so no matter the business sector, the channel of purchase or the country where the product or service was purchased from.

Moreover, consumers will be assured that all ADR schemes will be transparent and will deal with their dispute effectively and impartially. They will thus feel better equipped and more empowered to turn to ADR. As a result, more consumer problems will be raised and solved, thus leading to a reduction in consumer losses. The recovered losses can be then re-used in the internal market for the purchase of goods and services. Similarly the savings by

¹³⁰ A draft implementation and transposition plan of the two instruments can be found in Annex XI.

introducing quality ADR will be important, accounting for about 0.17% of EU GDP (€20 billion).

Furthermore, consumers will get to know about ADR and how it works. They will receive information on which ADR to turn to in case of a dispute with a trader in all contracts and commercial documents (e.g. receipts, invoices). For example a Swedish consumer who opens a bank account in a Swedish bank will receive information on the Swedish ADR scheme for banking in the contract he signs in order to open the bank account. Similarly, the same Swedish consumer who buys a personal computer in Germany will receive information on the German ADR scheme for electronic devices on the receipt he gets from the shop. Consequently, ADR will become common knowledge for consumers and the levels of awareness will increase substantially. Better knowledge will inevitably lead to more frequent use of ADR for all kinds of problems and will encourage consumers to use ADR. The creation of a consumer-friendly EU web-based platform will enable consumers to solve their disputes by electronic means and consequently increase their confidence to buy goods and services online and cross-border.

The overall impact on **businesses** will be reasonable. A number of costs will occur for businesses, namely: i) Businesses may be required to set up and fund -partly or totally- ADR schemes in the sectors where they do not exist. The related costs will depend on the sector, the disputes received and the country; they may range from €100.000 to more than €1 million per year. These figures are based on concrete examples of the costs incurred by existing ADR schemes in different Member States. For example, a cross-sectoral ADR scheme in Estonia ("Consumers Complaint Committee") handled in 2010 300 disputes with a budget of €87.500. A sector-specific ADR scheme ("Médiateur des Communications électroniques") in France handled in 2010 3.300 cases with a budget of €1 million. The Chamber of Commerce in Milan (cross-sectoral ADR) handled 600 cases with a budget of €76.500. The Member States which will be more affected are those that have a few or no ADR schemes in place, namely clusters 1 and 2 in paragraph 3.3.2. However, costs for businesses in relation to the obligation of full coverage are not directly linked to the existing coverage in ADR in the Member State where they are established. Full ADR coverage will not require systematically businesses to create a specific ADR scheme in each retail sector. Member States, in collaboration with businesses or not, may decide instead to create a single or residual cross-sectoral body to 'fill the gaps' in their territory (e.g. Denmark or Greece) .In addition, it should be noted that funding of ADR schemes by businesses is already a common practice in many sectors and Member States. It can take many different forms, such as levies at business sectors, case-by-case fees or fees proportionate to the cases they generate. ii) Businesses will have to adapt their contracts and commercial documents to include information on the relevant ADR schemes. This will generate certain costs to them, which will be one-off and will amount to about €771 million EU wide (€254 per business). The study carried out¹³¹ showed that SMEs will not be burdened particularly from the information obligations; the ones interviewed stated lower costs for adjusting to information obligations were lower than the ones for big businesses (probably because they issue less documents). It has to be taken into account that businesses will have the necessary time to make these modifications; hence the costs will not be excessive since all businesses update their contracts and commercial documents frequently (in most cases every one or two years).

¹³¹ See Annex VII

On the other hand businesses, including SMEs, will save on a yearly basis, if they use ADR instead of court proceedings, from € 1.7 billion to € 3 billion, while at the same time saving 258 days. In addition, they will enhance their reputation with consumers and to a significant extent address issues of reputational risk, by showing willingness to solve disputes in a non expensive and easily accessible way. They will also have the concrete possibility to solve their disputes with consumers out-of-court and to use the feedback received from the ADR process to improve their business practices and products. Moreover the adherence to ADR schemes will create a virtuous circle from which businesses which are reluctant to adhere will be excluded and bear a reputational risk. Currently a significant number of businesses state that even though they would like to use ADR it was not always available. Full coverage for all online, off-line, domestic and cross-border goods and services will therefore enable businesses to use ADR. This will allow them to avoid lengthy and costly in-court procedures and maintain their business reputation, while building good relations with their clients. As a result, businesses, and in particular SMEs, will have incentives to also improve their internal complaint handling systems and better competition will be secured. By developing an effective system that will enable businesses to resolve their disputes with consumers online their willingness to offer products and services via the internet will increase. This is particularly important for SMEs that are for the moment reluctant to offer goods and services online and across borders. As a result, consumers will have access to a wider range of products and competition within the internal market will increase.

Similarly, the impact on **Member States** will be reasonable. Costs will occur for the set up and running of new ADR, which Member States may need to bear partly or totally (the nature of the funding of ADR, either public or financed through private sector contribution or both). For example the Swedish and Greek ADR schemes are financed entirely by public funds. The relevant implementation costs will be similar to the ones described above for businesses. Member States will have the possibility to meet the obligation of full coverage through several options. Member States will also incur costs for reporting on the development of ADR schemes (persisting gaps, data on the number of ADR cases, level of businesses' engagement). However, these costs will be marginal since all Member States already have an authority to notify to the European Commission the ADR schemes, which comply with the two Commission recommendations. Some of them also have structures to monitor and report on ADR schemes (e.g. on number of cases, functioning).

The impact on the **EU budget** should also be considered. The EU will bear the costs to develop a web-based system for disputes linked to cross-border e-commerce transactions and the expertise required within the ECC network. Taking into account existing ADR schemes dealing with disputes online as well as similar EU tools, the budget needed for the set up of the web-based system can be estimated to about €2 million and annual maintenance and running costs will amount to approximately €300.000. Additionally, a more detailed monitoring on ADR will require the reallocation of some European Commission staff.

Finally, the preferred option will have a positive social impact. Simple and effective out-of-court dispute resolution should allow all consumers, including the vulnerable ones, to refer their disputes and be compensated. The recovered losses can then be reallocated in the internal market and contribute to growth. By offering effective means of online dispute resolution the willingness of businesses to offer goods and services online will increase. Consequently, consumers will have access to a wider range of goods and services, which will lead to more competitive markets with a likely reduction of prices.

The assessment of the impact of the current initiative on the Charter of Fundamental Rights is provided in Annex VIII. The relevant provisions referred to are: consumer protection (article 38), right to an effective remedy and to a fair trial (Article 47), respect for private and family life (Article 7) and data protection (Article 8). In particular, it will ensure a high level of consumer protection by providing an obligation on behalf of Member States to ensure that consumers can refer all their domestic and cross-border disputes to quality ADR/ODR schemes. It should be noted that the initiative will not affect the right of consumers or businesses to an effective remedy and to resolve their disputes before a court, as the ADR/ODR will not be a mandatory first step before going to court. In addition, the businesses and consumers will always be able to turn to court in case their rights and freedoms guaranteed by EU law are violated. All the necessary steps will be taken to guarantee that personal data, including the ones in the web based platform, will be processed in line with the EU data protection legislation¹³². All the necessary steps will be taken to guarantee that personal data, including the ones in the web based platform, will be processed in line with the EU data protection legislation¹³³.

In conclusion, the preferred option will tackle the problems identified, i.e. gaps in ADR coverage, low consumers' awareness, quality of ADR schemes and online dispute resolution for cross-border e-commerce transactions. It will meet the objectives set in a proportionate and adequate way, respecting the flexible and versatile nature of ADR in the EU and without resulting to excessive or unnecessary costs.

Actions included in the preferred option	Cost
Make available ADR schemes where they do not exist	€100.000 to €1 million annually (depending on the sector and the size of the country)
Creation of an EU web-based platform for e-commerce cross-border transactions.	-€2 million for the creation -€ 300.000 for the running costs - EU public administration personnel costs (2 administrators, 1 assistant)
Information by businesses about competent ADR schemes to deal with consumer disputes on their contracts and commercial documents.	€771 million for all EU businesses (€254 per business)
Reporting from Member States on ADR (persisting gaps, data on the number of ADR cases and on the level of businesses' engagement in the ADR proceedings).	Depending on existing administrative structures in Member States

¹³² See Annex VIII for a detailed assessment of impacts on fundamental rights.

¹³³ See Annex VIII

8.3. Proportionality of the preferred option

The scope of the intervention of the EU is limited to strictly necessary actions to achieve the objectives set. The preferred option is the combination of two intertwined and complementary legal instruments. A framework Directive on the development of ADR and a Regulation on the establishment of an ODR system at EU level will provide the most effective means to achieve the pursued objectives at the lowest comparative costs. The action at EU level takes account of existing national ADR schemes.

Since ADR exists in some Member States and in some sectors, the best instrument to ensure full coverage is a framework Directive. This instrument shall bind on the results to be achieved but shall leave to the Member States the choice of means. The framework Directive will build on ADR schemes that already exist and will leave Member States the necessary margins to build on their current situation and to intervene accordingly. This will also apply to the potential financial implications, as Member States will have the choice on how to intervene to reach the objective of the directive, instead of implementing a EU model for ADR in all sectors. Action at EU level will thus bridge the gaps that exist in different sectors across the Member States and encourage consumers to carry out cross-border transactions. This action regarding ADR will create the conditions to set up the EU ODR system which will be based on national ADR schemes and will not function unless there is full coverage of quality ADR throughout the EU territory.

The preferred option concerning ODR respects in the best way proportionality, while meeting the ambitious objectives of the Digital Agenda for Europe. Instead of creating a completely new structure at EU level, the preferred option will be based on the ADR schemes in compliance with EU obligations, thus guaranteeing the full coverage both at sectoral and geographical level and ensuring quality ADR services. Therefore, a Regulation will be limited to the set-up of the EU ODR system.

The burden to businesses and Member States resulting from the preferred option are the most proportionate as the objectives will be achieved at the lowest costs avoiding duplication of expenses or unnecessary administrative burdens (see paragraph 8.2).

A non binding approach will be probably less expensive for businesses and Member States. Both the development of ADR and the provision of information by traders would be done on a voluntary basis. However, there will be no guarantee that ADR schemes are available for all types of consumer disputes. This will undermine the effectiveness of ADR for both domestic and cross-border disputes, for both face to face and e-commerce transactions, and will deprive consumers and businesses from the possibility to solve their problems in an easily accessible, fast and inexpensive way. Consumers' and businesses' awareness of ADR will remain low. Consumers and businesses will continue to be reluctant in buying online in another Member State. The value added compared to the existing Recommendations, which as described above in paragraph 4.3 have not delivered the expected results, would be very limited.

A stronger harmonisation of ADR schemes (i.e. based on a EU model for quality national ADR schemes) will lead to high and unnecessary costs for businesses and Member States. It will fill the gaps in the ADR coverage but also modify well functioning national ADR schemes.

Likewise, imposing a completely new ODR scheme at EU level to deal with disputes relating to cross-border e-commerce transactions will be less efficient. It will entail a much higher monetary impact on the EU budget as well as a risk of incoherence and overlapping with existing national ADR schemes, which already provide online ADR services for disputes relating to cross-border e-commerce transactions.

9. MONITORING AND EVALUATION

The Regulation on ODR can be fully operational only when Member States implement the provisions of the framework Directive on ADR, in particular regarding the full ADR coverage¹³⁴. The overall system is expected to be fully operational after two years from the entry into force of the legislative package.

The proposed legislative initiatives would foresee the obligation of the Commission to publish biannual reports, following the adoption of the legislation. In these reports, the Commission will also evaluate the effectiveness of the legislation in meeting the objectives. In particular it will assess the impact of the initiatives in the use of ADR and ODR in the EU (consumers and traders actually using ADR) and the growth of cross-border and e-commerce transactions (consumers buying and traders selling online) as a result of the existence of ADR and ODR solutions.

Monitoring indicators

Objectives	Indicator	Source of information
Increase in the share of consumer disputes transferred to ADR schemes	<ul style="list-style-type: none"> • Increase in the number of cross-border ADR cases • Increase in the number of consumers and of traders buying and selling cross-border and online 	<ul style="list-style-type: none"> • Information from the competent authorities of Member States • Information from the Commission and national databases of ADR schemes • Data from ECC-network • Data from consumer Eurobarometer and other surveys
Raise consumers' awareness on ADR	<ul style="list-style-type: none"> • Increase in the number of consumers who know about ADR • Increase in the number of consumers who use 	<ul style="list-style-type: none"> • Data from consumer Eurobarometer and other surveys • Data from the competent authorities of Member

¹³⁴ See Annex XI for the time-line for the transposition.

	an ADR scheme to solve their dispute	States
Ensure that ADR schemes operate according to certain principles that allow consumers and businesses to trust them	<ul style="list-style-type: none"> • Compliance of the ADR schemes with the principles established at EU level 	<ul style="list-style-type: none"> • Information from ADR schemes • Information from the competent authorities of Member States • Information from the Commission and national databases of ADR schemes • Data from consumer Eurobarometer and other surveys
Increase consumers' and businesses' trust in the online trade	<ul style="list-style-type: none"> • Increase in the number of consumers who are willing to buy online from another Member State by 20% in 2020. • Increase in the number of businesses that are willing to sell online in other Member States by 10% in 2020 	<ul style="list-style-type: none"> • Data from consumer Eurobarometer and other surveys • Data from business Eurobarometer and other surveys • Information from national and EU reports on e-commerce trade

ANNEX I: EXECUTIVE SUMMARY OF THE STUDY ON "THE USE OF ADR IN THE EU"¹³⁵

Alternative Dispute Resolution (ADR) is a term used for a wide variety of mechanisms aimed at resolving conflicts without (direct) intervention of a court. ADR schemes usually use a third party such as an arbitrator, mediator or an ombudsman to help the consumer and the trader to reach a solution to their dispute.

The European Commission has adopted two Recommendations (98/257/EC and 2001/310/EC) which have established principles for ADR schemes. Member States have notified to the Commission more than 400 ADR schemes that they deem to be in conformity with the principles set up in the Recommendations. Nevertheless, ADR mechanisms have been developed unequally across the European Union. The number of ADR bodies, the procedures (arbitration, mediation, etc.), the nature of the initiative (public or private) and the status of the decisions adopted by ADR bodies (recommendation or binding decision) differ greatly.

This study provides an overview of existing ADR schemes throughout the European Union and how they work. Civic Consulting collected quantitative and qualitative data in order to identify consumer ADR bodies in the Member States, to identify existing gaps, and to analyse whether existing ADR schemes are in conformity with the Commission Recommendations. The report is based on data collected through desk research, surveys and in-depth interviews between January and August 2009.

I. CHARACTERISTICS AND USE OF ADR SCHEMES

Number of ADR schemes identified in the EU

The results of the study show that progress has been made in terms of availability of ADR schemes since the Commission database was first compiled. New ADR schemes are available, especially in the new Member States (e.g. Bulgaria, Hungary, Malta, Slovenia, Poland); some of them, although not yet notified, confirm that they meet the requirements for notification and plan to file requests in the near future. Non-notified schemes, however, reach a considerable number also in some old Member States (e.g. Germany, Austria, Sweden, Ireland, Italy).

750 ADR schemes relevant for business-to-consumer disputes were identified in Member States, of which only about 60% are notified to the European Commission. Reasons for non-notification are that schemes are in an early stage of their activity, that they lack awareness of the notification process, that there is no perceived benefit of notification and that it is unclear to them which institution they should file the notification request to.

¹³⁵ Study on the use of Alternative Dispute Resolution in the European Union, Civic Consulting of the Consumer Policy Evaluation Consortium (CPEC), 2009, available at: http://www.cc.cec/home/dgserv/sg/evaluation/pages/eims_en.htm

Number of ADR schemes identified in the EU

Member State	ADR schemes notified to EC ^(a)	Non-notified ADR schemes identified through survey ^(b) and complementary research	Overall number of ADR schemes identified
AT	18	4	22
BE	24	14	38
BG	0	3	3
CY	1	0	1
CZ	0	5	5
DE	223	24	247
DK	19	2	21
EE	2	0	2
ES	74	2	76
FI	2	1	3
FR	18	17	35
GR	3	0	3
HU	18	2	20
IE	5	10	15
IT	4	125	129
LT	1	4	5
LU	5	1	6
LV	1	2	3
MT	0	5	5
NL	4 ^(c)	0	4
PL	3	21	24
PT	13	0	13
RO	1	1	2
SE	1	15	16
SK	0	3	3
SL	0	6	6
UK	22	21	43
EU	462	288	750

Sources:

- (a) EC, DG SANCO website (http://ec.europa.eu/consumers/redress_cons/adr_en.htm)
- (b) Through surveys and complementary research.
- (c) The number of ADR schemes in the Netherlands has been reduced to three due to the establishment of the Financial Services Complaints Institute, which combines two of the previously notified schemes. Please note that in the Netherlands there are 44 Complaints Boards in charge of solving disputes between consumers and businesses which are organised under the Foundation for Consumer Complaints Boards (notified as one scheme).

Main characteristics of ADR schemes

ADR mechanisms are highly diverse, not only across the European Union, but also within Member States. There are public and private schemes, as well as schemes established on basis of cooperation between public sector and industry, or consumer organisations and industry. Although there is a high correlation between the nature of the scheme and the funding – i.e. private schemes are usually financed by the industry and public schemes by public funds – ADR bodies established by public law can also be financed by the industry (especially in highly regulated markets). For the large majority of the schemes participation of the industry in the ADR procedure is voluntary. However, a significant number of mandatory schemes exist.

ADR schemes can be also classified according to the outcome of the procedure. There are schemes that issue a non-binding decision (recommendation), and schemes where the decision

is binding on the business but not on the consumer, or binding on both parties. Finally, there are mediation-only schemes that try to reach a consensual agreement. In practice, however, many schemes offer a combination of possible outcomes. Especially when decisions are binding on both parties, ADR procedures often foresee a preliminary formal or informal attempt to reach a friendly agreement between the parties. The vast majority of the ADR procedures are free of charge for the consumer, or of moderate costs below 50 Euro. A majority of ADR cases are decided within a period of 90 days.

Use of ADR schemes

Individual ADR cases

The use of ADR schemes is not evenly distributed across Member States. Based on the number of reported ADR cases per 1,000 inhabitants in 2007, the year for which the most complete data set is available, ADR is clearly more relevant in Belgium, the UK, Spain, Sweden, Austria, Ireland, the Netherlands, Denmark, and Malta than in other EU countries.

The number of ADR cases in the EU has increased throughout the last years. For 2006, about 410,000 cases were reported, for 2007 about 473,000 cases, and the estimated minimum number of individual ADR cases in the EU in 2008 was approximately 530,000. This trend is confirmed when analysing data from large ADR schemes and national decentralised ADR systems for which data is collected at central level.

The high number of cases of the Financial Ombudsman Service in the UK (with more than 100,000 cases per year in several years) is an exception and large schemes in the Member States typically report between 5,000 and 20,000 cases per year. Large schemes are often schemes that deal with B2C disputes in one sector at national level (e.g. financial services, telecommunications, transport).

Collective ADR cases

Several types of collective ADR procedures are in use in the EU: collective investigations, as conducted e.g. by national advertising standards bodies in case of multiple complaints; representative collective ADR procedures where a single consumer or a consumer association can bring a collective case to the scheme on behalf of a definite number of affected consumers and the decision applies to the consumers who have signed up; finally, collective ADR procedures of the Scandinavian type, where the ombudsman has been granted the right to bring proceedings on behalf of a group of consumers and the claim extends automatically to all affected consumers. Except for collective investigations, few collective ADR cases have been brought so far.

Outcomes of ADR proceedings

The number of final decisions as percentage of the total number of cases greatly differs among schemes. Schemes that more often register percentages equal to or close to 100% are schemes that deal with disputes in advertising, energy and telecommunications markets, and financial services. Large percentages are also explained by the fact that participation of the industry to these schemes is often mandatory. Low percentages can be explained looking at the role played by friendly settlements: cases solved in an early phase through amicable agreements between the parties were not always included by the schemes in the category of cases that led to a final decision.

Compliance rates of businesses with ADR decisions in favour of the consumer differ by scheme rather than by country. The median compliance rate across all schemes that provided relevant data is high: 99%. The rate of businesses that complied with final decisions in favour of the consumers appears to depend partly on the nature of the scheme. The median compliance rate for schemes issuing a non-binding recommendation is 90%, whereas this rate is 100% for schemes that can take binding decisions.

When decisions are not binding, traders may comply with decisions in favour of the consumer because they consider the decision to be correct or acceptable, or because they want to avoid damage to their reputation or judicial expenses.

Coverage and gaps of ADR schemes

In most EU countries, the geographical coverage of ADR schemes is national. In some countries, such as Germany, Italy, Portugal and Spain the system is decentralised with ADR schemes providing their services at regional or local level.

ADR schemes can then be divided into ADR schemes that deal with disputes in several sectors of industry (cross-sectoral schemes) and ADR schemes that deal with disputes in one sector of industry only (sectoral schemes). Both types of ADR schemes are represented in the majority of Member States.

Gaps in the coverage of ADR procedures can be identified both at geographical and at sectoral level. In some new Member States ADR schemes are not yet developed, not in all sectors at least. However problems regarding the geographical coverage of ADR schemes are also encountered in old Member States, where ADR procedures are not always available homogeneously throughout the territory. ADR schemes have been more widely set up to solve disputes in financial services, package travel/tourism, and telecommunications. This may be related to the frequency of occurrence of consumer disputes in these sectors and the size of related consumer detriment. ADR schemes operating in the financial sector, travel and transport usually also deal with cross border disputes, often in close cooperation with the European Consumer Centres.

The results of this study underline the fundamental role of the European Consumer Centres in the use of ADR cross-border. ADR schemes usually deal with claims against traders based in their own country. When consumers have a claim against a trader based in another country, they can contact the ECC of their own country for information on ADR schemes available in the other Member States, and sometimes are supported when registering their claim with the relevant scheme.

II. PROCEDURES AND FUNCTIONING OF ADR SCHEMES

ADR schemes use a multitude of processes for resolving business to consumer disputes, which can be unique according to the culture and jurisdiction of EU Member States. The study has identified ten typical stages of an ADR procedure and examined in detail how they function in practice in different EU countries on basis of 15 case study ADR schemes.

Stage 1: Advertising the scheme. ADR schemes give information about their competence and proceedings on their websites, providing consumers with a contact address and, occasionally, a hotline. Flyers, brochures, paid advertisements in various media, referral systems through consumer organisations and other advice bodies are also used. One problem identified by

several schemes was the limited funding available for such purposes. A very effective way of communication for sectoral industry schemes is to put an obligation on the relevant traders and businesses to inform their customers.

Stage 2: Registering a claim. All ADR proceedings can be initiated by individual consumers, while only in some cases also traders can submit claims. Applications must be submitted in writing, but messages in e-mail format are usually accepted. Online application forms are also used and facilitate the introduction of complaints for consumers. It is not necessary, nor is it usual, for consumers to be represented by a lawyer. ADR proceedings are usually free of charge for both parties. Some schemes provide for a small fee to initiate the procedure, which is reimbursed to the claimant if his or her application is successful.

Stage 3: Decision on admissibility. It is a typical feature of ADR schemes that they have a limited scope of activities. Sectoral schemes will only deal with their specific industry sector, but even in the case of cross-sectoral schemes, the coverage is not really general as schemes have many exceptions in terms of industry sector covered, time limits within which a complaint can be lodged, or of minimum and maximum values for the complaints. Consumer can be required to complain to the business before lodging an application. Another common restriction is that court proceedings cannot run parallel to ADR proceedings.

Stage 4: Communicating the case to business and reaction. In most schemes businesses are given the opportunity to give their own side of the story. Usually ADR schemes have no power to request complete written documentation from the business in order to investigate the complaint. However, in some cases, if the business does not react during a set period of time, the procedure can nevertheless continue and is decided on the evidence submitted by the consumer.

Stage 5: Taking the evidence. ADR schemes rely on written evidence, and they are general flexible in taking and evaluating evidence. Oral hearings are often considered as too time-consuming and cumbersome and seldom used; also, ADR schemes usually do not have the power to examine witnesses. Nevertheless, ADR schemes can rely on technical expertise (internal or external) in order to assess the consumer's complaint properly.

Stage 6: Attempting to reach a friendly settlement. Most ADR schemes first try to solve the complaints submitted to them by friendly settlement, which can be a formal part of the procedure aided by personnel of the scheme (secretariat or ombudsmen themselves), or informal and possible at any stage of the process.

Stage 7: Appointing the decision-making body. The way ADR schemes appoint their mediators or decision makers varies substantially between schemes, and depends on the peculiarities of the sector covered, as well as traditions and practices in particular countries. The final decision makers for each case brought to dispute resolution may be just one person, such as an ombudsman or mediator, or an adjudicating panel which includes members from consumer associations and from the business side.

Stage 8: Adopting the decision. ADR schemes usually do not base their decisions only on the law and case law, but they focus on the practical solution of the dispute. ADR schemes take into account what is reasonable and fair, good practices, term of conditions negotiated ex-ante between business associations and consumer unions, or codes of conduct and equity. Many ADR schemes simply propose a solution to a conflict, i.e. they issue a decision that has the

character of a non-binding recommendation. However, a significant number of ADR schemes provide some sort of a binding decision, either for the business or for both business and consumer.

Stage 9 and 10: Implementing the decision and monitoring the outcome. When ADR schemes that give non-binding decisions monitor compliance with their recommendations, they communicate directly with the business and/or the consumer. In some cases, the names of non-complying businesses are published. Compliance rates by business are directly related either to the binding nature of the decision, or to the brand and reputation of the scheme if compliance is voluntary. National well-known schemes that have a system of naming and shaming appear to have relatively high compliance rates.

In conclusion, most ADR providers use a set of similar procedural stages to take a complaint from being registered to final resolution. Within these parameters, the same goal can be achieved in many different ways, though some schemes no doubt are more successful than others, in terms of cases submitted to them as well as percentages of cases resolved and businesses who comply with their decisions. The analysis shows many problems connected with court proceedings can be solved by effective ADR schemes, such as cost, duration of proceedings and formality.

Functioning of ADR schemes for collective cases

ADR schemes have limited experience with collective alternative dispute resolution.

Only a few schemes provide representative collective procedures. More frequently ADR schemes carry out collective investigations, i.e. if many claims against one trader are similar they undergo the same investigation, or just a sample of them are investigated, then all the parties settle individually on the basis of those decisions. The main concerns related to the functioning of ADR schemes for collective cases at present include: (a) the complexity of the procedure and related costs; (b) the nonbinding nature of the decision.

ADR schemes and cross-border cases

All the schemes selected for the case studies take up cases of consumers in other countries against traders or services within their jurisdiction. In-country consumers bringing cases against foreign traders are referred to the network of European Consumer Centres, or for financial claims, to FIN-NET.

The case studies examined for this study seem to confirm that although the referral systems function reasonably well, the take up by consumers of cross-border cases is still limited, particularly in the financial sector, whereas it is more widely used in the travel sector. In one particular scheme in the travel sector (in Germany) 44% of the total cases filed in 2008 at were cross-border cases. In contrast, in other sectors the share of cross-border cases remains low.

Difficulties consumers and businesses face in obtaining redress through ADR

Several barriers for the use of ADR schemes remain, both for consumers and businesses. On the consumer side, the most significant barrier is the lack of awareness which is an essential pre-requisite to access. Fragmentation of ADR services in larger countries, such as Germany or the UK can pose particular problems in terms of ensuring consumer awareness. Relevant

barriers also include non-compliance by business with non-binding decisions of ADR schemes and refusal by business to enter the procedure, which can ultimately undermine consumer trust in such schemes, as well as the absence of ADR schemes in areas or industry sectors where they may be needed. Additional barriers for cross-border ADR from a consumer perspective include in particular finding the right competent scheme and language barriers. In the business perspective, the main reason that prevents businesses from using ADR seems to be the lack of available ADR procedures in some sectors. Business associations also point out that businesses are sometimes prevented from using ADR schemes because only consumers can file claims.

III. CONFORMITY WITH EC RECOMMENDATIONS

Adherence to the principles of the Commission Recommendations

According to the Civic Consulting survey of ADR schemes, a substantial number of schemes are not aware of the Commission Recommendations. Even those schemes that are aware of the Commission Recommendations, do not always fully comply with them according to their own assessment. The large percentage of schemes that did not know whether they comply or not with the Recommendations is notable.

Notifying authorities in Member States do not seem to take a proactive approach in encouraging schemes to conform. Authorities also do not seem to carry out periodic monitoring of schemes once they have been notified, and centralised websites to guide consumers to the appropriate ADR scheme for their complaint are generally lacking at the national level. This makes it difficult overall for consumers to know whether schemes they are referred to offer fair and effective redress, especially as national standards for ADR schemes only exist in some Member States. This is also a particular issue for cross-border referrals through the European Consumer Centres, as they may need to refer consumers to schemes in other countries that are not notified (if there is no notified scheme operating in a particular sector for example).

The following paragraphs summarise the conclusions of the study regarding the conformity of ADR schemes in the EU with the key principles laid down in the two Commission Recommendations. Specific good practices identified in the course of the study are summarised in the related tables of this report, see Chapter 5.

The principles of impartiality and independence

Most ADR schemes throughout Europe appear to meet the requirement of independence, based on their own assessment, and the majority opinion of all other stakeholder groups. However, on occasion consumer associations considered that the independence of some schemes is questionable where the ADR is a privately established scheme, either part of the organisational structure of a business association or directly linked to a particular business, and not legally separated from it. There is greater risk in such cases perceived by some stakeholders that the loyalty of the decision makers could be with their paymasters and that this could prevent reaching a fair judgement, particularly when other principles, such as full transparency, are also not seen to be followed.

The principle of transparency

A considerable number of ADR schemes in Europe are not in line with the principle of transparency: neither the consumers nor the authorities have access to information about the use, number, and types of cases and past performance of the schemes. In today's conditions, one appropriate measure to ensure the transparency of the procedure could be that each scheme has its own website where consumers can access the desired information without specifically requesting it. This is particularly relevant in cross-border cases where alternative means of information are even more difficult and expensive.

The principle of effectiveness

Overall ADR schemes seem to meet the principle of effectiveness, which comprises requirements as to the accessibility, cost, and duration of the procedure. The vast majority of the ADR procedures are free of charge for the consumer, or of moderate costs, and do not require legal representation. Most ADR cases are decided within a period of less than 90 days, which appears to be a very reasonable time frame. Despite relying mainly on written evidence, ADR schemes are generally flexible in taking and evaluating the evidence and may take the initiative to have an expert opinion prepared. A number of ADR schemes do not provide for online access to the procedure.

The principle of liberty

The principle of liberty is respected by ADR schemes as far as consumers are concerned, to the extent that they lead to an agreement between the parties on the case, or lead to a prior agreement to accept the binding nature of the decision; or require the acceptance of the binding nature of the decision when filing the complaint (in cases that the law orders their binding nature).

As far as businesses are concerned, in many ADR schemes, the binding nature of the decision is based on a general agreement or decision of the business association running the scheme, which is binding on its members. There are also cases in which the law provides directly that the decisions adopted by a certain ADR scheme will be binding on the business. Mandatory schemes where decisions are binding up to a certain threshold regardless of whether the business specifically accepts this or not, are often seen by stakeholders as being very effective in terms of consumer protection – however, they also go beyond the requirements outlined in the liberty principle of Recommendation 98/257/EC.

Finally, from the answers given by ADR schemes, consumers are able, in most cases, to initiate court proceedings if they are unsatisfied with the result of the ADR procedure. Consumers might have no possibility to go to court if they chose to accept, *after* the dispute has arisen, the ADR procedure as final and binding.

The principle of legality

Many ADR schemes restrict themselves to recommending a solution to the conflict between consumer and seller/service provider, i.e. the decision has the character of a non-binding recommendation. In these cases consumers are free to decide how they wish to react. For the schemes surveyed consumers can freely choose whether they want to submit to a binding ADR, with only a few exceptions. In such a situation, consumers cannot be said to have been

deprived of the protection which they might have otherwise obtained in the courts. So from the available evidence, ADR schemes in Europe responding to the survey appear to comply, generally, with the first point of the legality principle of Recommendation 98/257/EC¹³⁶.

The principle of representation

The information obtained in the case studies and from stakeholders gives no indication that ADR schemes prohibit parties from being represented or assisted by a third party. Some of the schemes examined specifically offer the possibility of being represented by a lawyer, though this happens rarely.

In conclusion, according to the available evidence, ADR schemes comply, in general, with most requirements laid down in the two Commission Recommendations concerning Alternative Dispute Resolution, in particular as regards independence, adversarial principle, costs, duration, active role of the decision-making body, mandatory consumer protection, reasoned decision, access to the courts and legal representation. Problems persist in some areas, such as the transparency of ADR procedures, in that a considerable number of ADR schemes do not have a website of their own. In addition, in many cases consumers do not have easy access to information about the use, number, types of cases and past performance of ADR schemes. Electronic access to the procedure is not always possible.

The results of this study indicate the difficulty for ADR schemes and other stakeholders in understanding which of the two Commission Recommendations applies to a specific scheme. As many ADR schemes that lead to an arbitration decision also have a mediation stage, the division between the two Recommendations appear to be artificial and not helpful in practice. A possible solution could be for the Commission to update and recast the Recommendations concerning Alternative Dispute Resolution or, alternatively, to publish guidance on how to apply them. In both cases, a consolidated, simple and plain language checklist to (self-) assess conformity with the principles would be helpful.

Many of the schemes investigated apply best procedural practices that could be shared with others. Such best practices can supplement and benefit the list of principles in the Commission Recommendations. These could take the form of EU wide guidelines or more formal industry standards to be developed by an appropriate body and implemented into national guidelines or standards.

¹³⁶ The second sentence of principle V, paragraph 1 of Recommendation 98/257/EC stipulates that in the case of cross-border disputes, the decision taken by the body may not result in the consumer being deprived of the protection afforded by the mandatory provisions applying under the law of the Member State in which the consumer is normally resident in the instances provided for under Article 5 of the Rome Convention of 19 June 1980 on the law applicable to contractual obligations. Because of the lack of data and also considering the current limited take up by consumers of cross-border consumer cases it is not possible to conclude whether there are relevant issues regarding conformity of ADR schemes with the second sentence of principle V, paragraph 1 of Recommendation 98/257/EC.

ANNEX II: CALCULATION METHOD FOR ESTIMATED LOSSES AND SAVINGS FOR CONSUMERS

This Annex explains the calculations through which the Commission services estimated:

- (2) the losses suffered by European consumers due to problems with purchased goods and services.
- (3) the potential savings for consumers if Quality ADR would be in place
- (4) the potential savings for consumers if an efficient cross-border e-commerce ADR would be in place

0.4% of EU GDP: consumer losses due to problems with purchased goods or services.

The data is from the dataset collected for the Eurobarometer on Consumer Empowerment¹³⁷, which includes 53402 observations collected in all EU27 countries. The calculation is based on the responses to question 27¹³⁸ which shows the percentage of consumer with a problem and the responses to question30¹³⁹ which shows the estimated losses.

Consumer losses due to problems with cross-border purchases of goods or services

In 2009, cross-border expenditure amounted to €175 billion in the EU. The amount spent by consumers on cross-border *internet* shopping is estimated at €30 billion for the same year. In total, these expenditures represent 1.75% of EU GDP¹⁴⁰. As the total detriment suffered by EU consumers, amounts to 0.4% of EU GDP, the detriment related to cross border shopping (including internet) can be estimated between €500 million and €1 billion.

0.17% of EU GDP: estimated savings for European consumers if quality ADR is available.

The data is from the dataset collected for the Eurobarometer on Consumer Empowerment¹⁴¹, which includes 53402 observations collected in all EU27 countries. Out of the total sample, 21% of consumers report that in the last 12 months they have encountered at least one

¹³⁷ Special Eurobarometer 342, Consumer Empowerment 2011, http://ec.europa.eu/public_opinion/archives/ebs/ebs_342_sum_en.pdf

¹³⁸ Special Eurobarometer 342, Consumer Empowerment 2011, QA27 In the past 12 months have you encountered any problems for which you had legitimate cause for complaint with a good, a service, a retailer or a provider?

¹³⁹ Special Eurobarometer 342, Consumer Empowerment 2011, QA30.1 Thinking about the last problem you encountered, could you please estimate the total value of any financial losses involved as a result of this problem? It doesn't matter if you are not entirely sure, we are interested in your estimations.

¹⁴⁰ The figure on cross-border expenditure (175 billion €) is from Eurostat statistics 'spending of EU consumers in EU countries other than the one they are resident in, while on holiday, business trip, etc'. The figure on cross-border internet shopping (30 billion €) is calculated as follows: 423 million consumers in the EU (i.e. population aged over 15, Eurostat) * proportion of EU population engaging in cross-border internet shopping (9% as per Special EB 298) * average amount spent by a cross-border shopper on these purchases (797€ as per Special EB 298).

¹⁴¹ Special Eurobarometer 342, Consumer Empowerment 2011, http://ec.europa.eu/public_opinion/archives/ebs/ebs_342_sum_en.pdf

problem for which they had legitimate cause to complaint (question 27)¹⁴². However, only 5% of those who encountered a problem declare to have taken the business concerned to an out-of-Court dispute settlement mechanism (question 31)¹⁴³. Among those that decide not to proceed, 44% of consumers answered that the main reasons for not taking the case to an ADR (question 37¹⁴⁴) were:

- it would have taken too much effort
- it would take too long
- the consumer did not know how to proceed
- the procedure would be too expensive
- the consumer did not know that such things exist
- these mechanisms were not available
- the other party was not willing to use these mechanisms.

All these obstacles can be removed by introducing quality and publicly known ADR schemes, available for all retail market sectors. This means that almost 8% of consumers who suffered an average financial loss of 300€¹⁴⁵ due to a problem with a good or service they purchased (question 30)¹⁴⁶, would have the opportunity to recur to an efficient redress mechanism.

The same magnitude of financial losses is also mentioned in other studies. For example, a study in the UK shows that the detriment suffered is slightly higher when measured as a share of EU GDP¹⁴⁷.

In aggregate terms, potential savings for European consumers are estimated roughly around €20 billion, which correspond to 0.17% of EU GDP. The aggregate figure is obtained by

¹⁴² Special Eurobarometer 342, Consumer Empowerment 2011, Annexes, p.55: QA27: "In the past 12 months have you encountered any problems for which you had legitimate cause for complaint with a good, service, a retailer or a provider?"

¹⁴³ Special Eurobarometer 342, Consumer Empowerment 2011, Annexes, p.62 QA31: "As a consequence of the problems you encountered, did you take any of the following actions?"

¹⁴⁴ Special Eurobarometer 342, Consumer Empowerment 2011, Annexes, p. 74 QA37: "Thinking about the last time you encountered such a problem but didn't take the business concerned to an out-of-court dispute settlement-body (ADR), what are the main reasons for that?"

¹⁴⁵ The estimated benefit of €20 billion (0.17% of GDP) is based on: (1) 60 million disputes [425 Mio. citizens above 15 years each having each having 1.75 disputes per year among which 8% can be solved via ADR] that will successfully be solved per year resulting in a payment of 300€ each to consumers. The €300 per case is consumers' estimates about their loss per case. These estimate can be confirmed by other data gathered, which show that the costs of an ADR procedure for the scheme vary from €30 to €50 per case. Taking the maximum amount of €50, dealing with 60 million disputes would cost €3 billion.

¹⁴⁶ Special Eurobarometer 342, Consumer Empowerment 2011, Annexes, p. 58 QA30 Thinking about the last problem encountered, could you please estimate the total value of any financial losses involved as a result of this problem? It doesn't matter if you are not entirely sure, we are interested in your estimations. Available at: http://ec.europa.eu/public_opinion/archives/ebs/ebs_342_en.pdf

¹⁴⁷ http://www.offt.gov.uk/shared_offt/consultations/eProtection/oft1252con.pdf

multiplying the average financial losses (300€)¹⁴⁸, the average number of problems per person (1.75¹⁴⁹ considering the sub-sample of 4102 observations), the percentage of people who encountered a problem that can be solved by well functioning ADR schemes (8%) and the EU27 population aged 15 and more (425 million)¹⁵⁰. If there were quality ADR schemes available for all retail market sectors then all these losses could have been averted or compensated.

0.02% of EU GDP: potential savings for European consumers if ODR for cross-border e-commerce transactions is available.

The creation of ADR to solve disputes related to e-commerce cross-border traders should allow European consumers, who were worried about redress possibilities in case of disputes with traders, to save money when buying online and across borders at a lower price.

As a result of a study with mystery shoppers conducted by Psychonomics¹⁵¹ on behalf of the European Commission, we have estimated that a European consumer on average can save 2.37% of the total value of a basket of 100 products buying these products on the internet at the cheapest price either domestically or cross-border compared to buying the same products on the internet only domestically.

This figure is then combined with the answers on consumers' attitudes towards cross-border purchases in the Flash Eurobarometer 299 on "Consumer attitudes toward cross-border trade and consumer protection". In particular, we use the replies to a sub-question of question 5 which asks whether the individual is not interested in making a cross-border transaction because he is worried that difficulties could arise if there was a need to resolve problems, such as complaints, returns of faulty products, etc. Among those who did not make a cross-border e-commerce purchase, 59% of the respondents' answer that they totally agree or tend to agree that uncertainty about the resolution mechanism is an obstacle¹⁵². Bringing these figures together, the calculation of the potential savings from an efficient cross-border e-commerce ADR is based on the following formula: total online sales in Europe in 2010 (€171.9 billion according to a Center for Retail Research conducted by industry¹⁵³) multiplied

¹⁴⁸ The average loss of €300 is calculated based on a filtered sample of respondents who could use ADR. The filtered sample excludes those respondents who already received a satisfactory reply from the trader or already went to ADR.

¹⁴⁹ Special Eurobarometer 342, Consumer Empowerment 2011, p. 11173; QA29: This calculation is an average of the answers received to the following question: "Could you please tell me how many such problems you encountered over the last 12 months? Available at: http://ec.europa.eu/public_opinion/archives/ebs/ebs_342_en.pdf

¹⁵⁰ The age limit of the population used is a standard methodology of Eurobarometer surveys, as agreed with EUROSTAT. It should be noted that the inclusion of the population aged between 15 and 18 may lead to an underestimation of the detriment as this age group is more likely not to report the loss suffered. Accordingly, it is not possible to use the household base as the questions asked in the Eurobarometer surveys refer to individuals and not households.

¹⁵¹ YouGovPsychonomics (2009) "Mystery shopping evaluation of cross-border e-commerce in the EU" (2009): http://ec.europa.eu/consumers/strategy/docs/EC_e-commerce_Final_Report_201009_en.pdf

¹⁵² Eurobarometer (299): Consumer Attitudes Towards Cross-Border Trade And Consumer Protection, p. 30 "Thinking generally about purchasing goods or services from sellers/providers located elsewhere in the European Union, which we refer to as "cross-border shopping", please tell me to what extent you agree or disagree with each of the following statements.

¹⁵³ This is a prudent estimation given that in 2011, online sales in Europe are forecast by CRR to grow by 18.7% to a new total of € 202.9 billion (<http://www.retailresearch.org/onlinetailing.php>) while the IMRG World report expect them to be around € 214 billion (More information available on demand).

by the percentage that can be saved buying cross border- (2.37%) multiplied by the percentage of consumers who indicate as one of the reasons for not trading cross-border the absence of well-functioning redress possibilities (59%). The aggregated figure that results from this calculation is €2.5 billion, which approximately corresponds to 0.02% of EU GDP.

0.19% of EU GDP: total savings for European consumers

Evidence shows that if quality ADR schemes for all retail market sectors exist, there is a clear potential saving for consumers domestically as well as cross-border. Currently, in aggregate terms, potential savings for European consumers are estimated roughly around €20 billion, which correspond to 0.17% of EU GDP while for the latter these savings are estimated around €2.5 billion, which corresponds approximately to 0.02% of EU27 GDP. A total of 0.19% of EU GDP may be therefore saved and used for other activities.

ANNEX III: FEEDBACK STATEMENT OF ADR PUBLIC CONSULTATION¹⁵⁴

I. OVERVIEW OF THE RESPONSES RECEIVED

The public consultation on the use of Alternative Dispute Resolution (ADR) as a means to resolve disputes related to commercial transactions and practices in the EU was launched on 18 January 2011 and officially ended on 15 March 2011. It aimed at gathering information on the use of ADR as a means to resolve disputes with traders, at seeking Member States and stakeholders' views on the difficulties identified and at looking into possible ways in which the use of ADR within the European Union (EU) could be improved.

The Commission received a total of **220 responses** at end of March 2011¹⁵⁵. Contributions will be published online in accordance with the Commission practice and applicable rules at the following web-page: http://ec.europa.eu/consumers/redress_cons/adr_en.htm#consultation.

Category	Detailed description of respondent		Total
Member States / Public Authorities	Member States	20	33
	Public / Local Authorities	8	
	Regulators	4	
	Third countries	1	
Consumer Associations	EU Organizations	2	32
	National level organizations	30	
European Consumer Centres (ECC)	EU	17	18
	EFTA	1	
Business	EU trade organizations	29	94
	National trade organizations	50	
	Individual companies	15	
ADR Schemes	Public	8	23
	Private	15	

¹⁵⁴

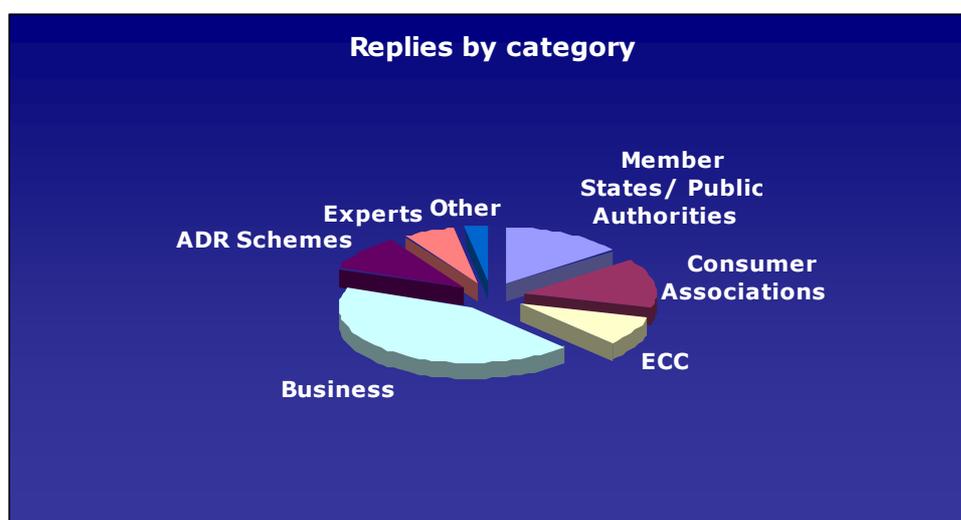
Available at http://ec.europa.eu/consumers/redress_cons/Feedback_Statement_Final.pdf

¹⁵⁵

Replies received after 31 March 2011 could not be taken into consideration in this feedback statement.

Experts	Academics	4	14
	Legal practitioners	10	
Citizens	Citizens	6	6
TOTAL			220

The breakdown of contributions by category of respondents is as follows:



The analysis of the origin of replies shows a large and fairly representative participation of all Member States and stakeholders from the whole EU. Moreover, almost one out of four replies was received from EU level organisations. Finally, also non-EU stakeholders took part in the consultation.

II. SUMMARY OF THE MAIN TRENDS

- Respondents from all categories showed a strong support for ADR schemes as an efficient alternative to in-court proceedings for consumer disputes. They underlined the importance of developing consumer ADR schemes to benefit both consumers and businesses and, overall, to improve the well-functioning of the internal market. Many respondents supported the improvement of online dispute resolution schemes for e-commerce transactions. Most Member States and stakeholders welcomed EU level action to enhance the functioning of consumer ADR schemes. A future EU action should take account of existing national schemes. It should strengthen coordination throughout Europe.
- Contributions generally stressed that flexibility is an essential element of ADR schemes. All respondents agreed that efficiency, speed and low costs of ADR schemes are the main incentives for consumers and businesses to use ADR and to comply with its outcomes.
- The voluntary nature of ADR for business and consumers should be preserved according to many Member States and business representatives. Respondents from consumers expressed a more favourable opinion for mandatory ADR, but only for traders and especially in highly regulated sectors.
- Concerning the nature of ADR outcomes many respondents, including some Member States and ADR schemes, recalled that it may depend on the conditions of a specific market (e.g. highly regulated sectors). For several consumer representatives ADR outcomes should be binding for the trader. Most business respondents stressed that the parties should agree in advance whether or not ADR outcomes should be binding.
- A fundamental condition to improve the use of consumer ADR schemes is to raise awareness of consumers and business. All involved parties should play their role, in particular public authorities and sector regulators. Existing EU networks (ECC-NET and FIN-NET) should continue to facilitate consumers' access to ADR and provide guidance on the use of ADR schemes, in particular for cross-border disputes.
- Most respondents underlined that performing ADR schemes should be guided by a number of common principles, such as independence, impartiality, transparency and effectiveness. For consumer associations the principles of consumer ADR should be included in a binding instrument. Most replies indicated the importance of monitoring the functioning of ADR schemes in order to enhance their effectiveness and the use.
- Most Member States and stakeholders focused mainly on ADR to resolve individual consumer complaints. A majority of businesses are not in favour of ADR dealing simultaneously with both consumer and SME complaints. They stressed that disputes of SMEs require a different treatment, which justifies excluding them from consumer ADR schemes. Some Member States seem also to favour a separate approach for consumer and SMEs complaints.
- Respondents generally emphasised the importance of different sources to fund ADR schemes. All agreed that ADR should be low cost or free of charge for the consumer.

III. Specific replies to the questions

3.1 Consumer and business awareness of ADR

In most replies the lack of consumer awareness was recognised as a major obstacle to the use of ADR schemes. The most efficient ways to promote ADR schemes among consumers mentioned by respondents were: *advertising campaigns* explaining the main features of ADR schemes and the advantages of using them, including examples of best practices and success stories; *user-friendly, widespread and high quality information* provided via different channels (websites, various media, brochures, leaflets, etc). National initiatives should address consumers in the same country as well as from other Member States. Several replies suggested organising pan-European initiatives.

In general, respondents asserted that the European Consumer Centers Network (ECC-NET), national authorities and relevant NGOs have an important role to play to raise consumer and business awareness of ADR. Legal practitioners and businesses stressed that fundamental information on the existence and functioning of ADR schemes should be publicised where potential users are most likely to look at, namely public bodies, sector regulators and ECC-NET. Public authorities, in particular, could support national information and education campaigns. Many replies from all categories underlined the importance of improving and strengthening ECC-NET in its role to inform and guide consumers to the relevant ADR scheme across the EU.

A majority of respondents, including business representatives, underlined that businesses should contribute to spread information about ADR schemes. However, businesses pointed out that it should not be an obligation. Many business representatives warned on the possible costs required by this approach, in particular for small companies. In the view of other respondents traders should be obliged to disclose to consumers if they are part of an ADR scheme through their general conditions, advertising, customer relations services and their Internet sites. Moreover, targeted information should reach consumers when they need it (e.g. at the conclusion of the trader's internal complaint handling procedure).

It was also largely recognised that information should also be made available by ADR schemes in a clear and prominent way. ADR bodies should explain their main features. For several respondents, this would include statistics on cases and compliance rates. Information should be accessible preferably via the Internet or through intermediary actors, such as ECC-NET, public authorities, consumer associations or also social services providers. In general, ADR bodies should also provide training and organise seminars and conferences on their activities. Some consumer organisations suggested using a common logo, recognisable at EU level, to indicate membership by traders to ADR schemes.

3.2 Involvement of traders and suppliers

Most business representatives stressed that ADR schemes should be based on the consent of the parties. A few businesses, however, indicated that adherence by traders already is, or could be made, mandatory in some sensitive sectors (e.g. for financial services) but under specific conditions.

Consumer representatives generally favoured mandatory adherence only by traders to ADR schemes, especially in highly regulated sectors, in order to counterbalance consumers' weaker

position. Some consumer representatives, however, recalled the voluntary nature of the participation to the ADR procedure for both consumers and traders, and supported at the same time the binding character of ADR outcomes.

Many Member States underlined the voluntary nature of ADR schemes. A few of them could accept mandatory adherence, at least in some specific market situations. ADR schemes underlined the importance of mandatory adherence from business and consumers to ADR in specific sectors, such as transport, financial services, telecommunications and utilities.

According to a large majority of respondents, imposing ADR as mandatory step before court may impinge on individual consumer's right to go to court. A few respondents considered that parties in judicial proceedings could be encouraged to use ADR for specific cases, notably for low-value complaints.

A majority of business respondents considered that the parties should decide on whether or not ADR outcomes should be binding. Many consumer representatives favoured the binding nature of ADR outcomes only for the trader.

A few Member States would support binding outcome of ADR schemes, at least in some specific sectors (e.g. public services and utilities) identified by the legislators. One Member State suggested, as an intermediate approach, that ADR outcomes could become binding and legally enforceable if the traders do not contest them within a certain period of time.

Some ADR schemes referred to the choice of the parties to comply accompanied by the requirement for traders of presenting regular reports on ADR compliance. Others were in favour of binding decisions, in particular for mandatory ADR schemes.

Experts and legal practitioners were equally divided on this issue. Some recalled the voluntary nature of the ADR procedure, including the choice of complying with its outcome. Others stressed the contractual nature of the ADR outcome, which is thus binding on both parties.

Most respondents underlined that enhanced awareness and strengthened trust in the quality and transparency of ADR schemes would persuade consumers and businesses to use ADR and comply with their outcome. Efficiency, speed and low costs were mentioned among the main incentives for both consumers and traders to use an ADR scheme. Most replies suggested as concrete actions for ADR schemes to gain trust and establish a reputation of being objective and competent: *i*) providing clear, transparent and concise information on the main features of the procedure, including statistics on past cases and rate of compliance (a few Member States pointed out the importance of making this information accessible across borders); *ii*) highlighting that ADR is a simple, cheap, fast and accessible means to solve disputes; *iii*) publicising ADR outcomes; *iv*) ensuring independence and confidentiality of the procedure; *v*) creating central contact points to guide consumers to the appropriate ADR.

Some consumer representatives advocated for more robust incentives (e.g. freeze of limitation period, list of businesses not complying with ADR outcomes, penalties/fee if a low value case before the court has not been treated previously by ADR).

3.3 ADR coverage

Respondents generally agreed that consumer ADR coverage should be improved. This would stem mainly from the broader recognition of ADR's inherent benefits.

Stakeholders from all categories underlined the importance of some already established ADR in highly regulated sectors (e.g. energy, electronic communications and financial services). However, some Member States as well as consumer and business representatives highlighted the need for new ADR schemes in specific sectors to deal with low value disputes.

Some contributions suggested creating a European portal on the cross-border use of ADR.

Some consumer representatives pleaded for an improved offer of ADR services through a general ADR scheme (or, alternatively, one ADR for each major market sector and a general ADR scheme covering those businesses that do not belong to any specific sector). Some contributions raised the need to clarify terminology relating to ADR. It was suggested in particular, avoiding unclear definitions, such as “*customer complaint handling mechanisms*” or “*direct negotiation between parties in order to achieve amicable settlement*”.

Regarding the feasibility of ADR schemes open for consumer and SME disputes, most respondents (including businesses) argued that business-to-business disputes can cover different matters and thus require appropriate procedures and legal expertise. In their view, it would prove difficult for ADR schemes to fulfil the necessary requirements to deal simultaneously with both consumer and SME complaints.

Many contributions supported the improvement of online dispute resolution schemes (ODR) for e-commerce transactions. This type of online scheme should apply to cross-border e-commerce, where there is an increasing number of complaints especially for low-value cases.

Some business representatives and legal practitioners supported the use of ODR for all cross-border transactions. Some respondents from these categories argued, however, that relying on a specific and centralised scheme for online trade would raise some difficulties in the sectors (e.g. telecommunications, energy and financial services) where high level of competence and expertise is required. Moreover, the operation of a centralised system would entail a specific approach to language requirements and to different legal frameworks. A sector-specific scheme was considered as being closer and more suitable to the parties.

Many consumer representatives indicated that ODR is the most suitable way to deal with cross-border disputes. Most consumers welcomed the possibility of a centralised access to an ODR scheme for disputes linked to cross-border e-commerce transactions. Nonetheless, they underlined the need to tackle the language issue and the need to provide adequate information to the parties on the process and its outcome.

ADR bodies acknowledged the importance of improving means of redress in the online environment to increase consumer and business confidence. They drew attention to the need to build on positive experiences that exist in specific sectors (e.g. financial services). This latter aspect was also underlined by some respondents from other categories.

A majority of respondents believed that a single entry point or umbrella organisations could be very useful to provide consumers with information on and guidance to the appropriate ADR scheme at both EU and national level. They can indeed complement the work of EU networks and relevant public authorities.

Some Member States stressed the important role of a single entry point or umbrella organisations to extend ADR coverage to sectors where ADR schemes do not yet exist. Some business representatives considered that the added value of a single entry point dealing with

dispute resolution should be carefully assessed given the possible lack of specific competence on each specific sector. Moreover, it was recalled that a single entry point or umbrella organisations would not be needed where general cross-sector ADR schemes already exist. Other businesses, however, seems to be favourable to a single entry point, in particular for cross-border disputes.

Most replies referred to the complexity of using ADR for collective claims compared to individual consumer disputes.

Some respondents from businesses, legal practitioners and ADR schemes could accept ADR addressing mass claims, but this scheme should respect clearly identified conditions to guarantee effectiveness of the procedure. A few contributions emphasised the need to have an "opt-in" and confidential procedure. According to another contribution, outcomes of ADR procedures related to mass claims should be published. Some other business representatives considered that using ADR for collective claims contradicts the quick, simple and low-cost nature of ADR schemes.

Member States and consumer representatives explained that often ADR schemes identify a test case to resolve a particular issue and apply the same outcome to identical claims.

Contributions generally recognised the added value of EU action in order to boost consumers' trust with regard to the resolution of cross-border disputes. Most respondents stressed the need to enhance consumers' awareness (e.g. via a European portal informing on ADR in other Member States).

A majority underlined the important role played by EU networks to raise consumer awareness as well as to guide consumers to ADR schemes in other Member States (ECC-NET and FIN-NET). According to some businesses the FIN-NET network provides a useful example for other sectors.

Most consumer representatives and some business representatives supported the establishment of a centralised system aimed at strengthening coordination of national frameworks. A few respondents suggested creating a European Consumer Ombudsman to deal with cross-border complaints.

3.4 Funding

Most respondents were of the opinion that the best way to fund ADR schemes is a mixed system, where funds are provided by the national authorities and the business sector.

A majority of businesses acknowledged their role in ADR funding. However, many of them also recognised that an efficient scheme should not be solely funded by the traders.

Consumer associations stressed more clearly that public funding is a more efficient way. In their view, it better respects the independence of the ADR scheme.

Most replies, however, pointed to the need for a pragmatic approach. Because of the high diversity of ADR schemes in the European Union a "one-size-fits-all" solution can hardly be considered a realistic option. Many respondents from all categories mentioned various possibilities, often drawn from current experiences in the Member States: using funds raised by the regulatory authorities for their control activity in the relevant sector, a case-handling

levy or case fees from the traders covered by the scheme, contribution to running costs required from the two parties, applying the "loser pays" fee-shifting approach.

Independence and impartiality are unanimously considered the fundamental principles that ADR schemes should respect. Efficiency, transparency and interruption of prescription periods are considered equally important.

Independence of ADR schemes depends on the fulfilment of fundamental principles more than on the (total or partial) funding by one of the parties. For a large number of respondents from all categories, the best ways to achieve independence and impartiality include: appointment of a collegial body where parties are equally represented; strict and transparent rules and procedures; fixed and separate annual budget to be provided beforehand to the ADR scheme; remunerations of experts acting within the ADR scheme to be defined in advance and not according to results so as to guarantee an effective and impartial evaluation.

In some respondents' view (especially businesses) the current Commission Recommendations on ADR provide sufficient elements to define impartiality and independence of ADR schemes which are funded by business.

For consumer associations the principles of consumer ADR should be included in a binding instrument. Some consumer representatives mentioned also the interruption of prescription periods among common principles to be set for ADR.

Additionally, many contributions pointed out the importance of monitoring ADR schemes to ensure that they are well adapted to the situation in the relevant sectors and operate efficiently. For consumer organisations in particular, ADR schemes should be subject to regular and effective assessment of compliance with the common principles underpinning ADR as they are defined at EU level.

ADR schemes should be basically free of charge or low cost for the consumer/claimant. According to some respondents from consumers and businesses an initial administrative fee on the consumer would be justified where linked to a required technical expertise or to the high value of the dispute in some specific sectors. This could then be refunded to the consumer if the ADR outcome is in his favor.

ANNEX IV: SUMMARY REPORT OF THE SUMMIT ON ALTERNATIVE DISPUTE RESOLUTION FOR CONSUMERS IN THE INTERNAL MARKET¹⁵⁶

On 16 March 2011 the European Commission, DG SANCO, and the IMCO Committee organised a Summit on Alternative Dispute Resolution (ADR).

Key-speakers included Commissioner John Dalli, Minister Zoltan Cséfalvay from the Hungarian Presidency, MEPs from the IMCO and JURI Committee, and consumer and business representatives.

Commissioner Dalli underlined that the development of ADR - as a cost-effective, flexible and successful means for consumer redress - is a key priority in the Single Market Act. He announced the publication of a legislative proposal by end 2011.

Minister Cséfalvay stressed the importance of ADR as a complement to litigation. The EU should accommodate the Member States in developing such schemes in partnership with business associations.

Members expressed their full support for the development of ADR, also to enhance consumer confidence when shopping cross border. While they agreed that there is no one-size-fits-all approach, they warned for too many different schemes which may confuse the consumer and deliver mixed results. Many speakers stressed the lack of awareness of existing ADR schemes, both on the consumer and the business side.

Examples given from Italy, the Netherlands and Denmark showed that companies not only take part in ADR schemes to boost their image, but also use the data on solved complaints to improve their products, services and - as a result - consumer satisfaction. However speakers also stressed that businesses do not always engage in ADR proceedings and that some consumer complaints cannot be dealt with due to the lack of ADR schemes. The Commission was urged to come forward with a proposal to provide clarity on the conditions in order to ensure high quality ADR schemes in all consumer markets, and particularly for e-commerce.

The IMCO Chair Malcolm Harbour chaired the event, which was well visited with around 200 participants from 26 Member States, Norway and the USA.

I. Keynote speeches

John Dalli, the Commissioner for Health and Consumers, stressed that consumers should be able to resolve their disputes with a trader out-of-court in a low-cost way. This would boost the confidence of consumers and foster demand for goods and services both off and on-line. Currently the losses incurred by European consumers due to problems with purchased goods or services are estimated at 0.4% of Europe's GDP. 46% of Consumers do not act when something goes wrong.

There is a clear progress in developing ADR schemes - already more than 700 EU-wide - but they have not yet reached their full potential. The Public Consultation, which ended on 15

¹⁵⁶ A full report of the Summit is available at <http://www.europarl.europa.eu/activities/committees/events.do?language=EN&body=IMCO&product=EOT>

March 2011, identified three main shortcomings that hinder the effectiveness of ADR in the EU:

- Important gaps, both sector-specific and geographical, persist in most Member States. Moreover, only 62% of the consumer ADR schemes deal with claims from consumers residing in another Member State, which is too little considering the growing importance of e-commerce.
- There is very little awareness from citizens, and access to ADR is not always easy for consumers as there are many different schemes. Also a recent Eurobarometer survey showed that 40% of retailers were unaware of ADR.
- Traders are reluctant to sign up for ADR. At present, 64% of ADR schemes are voluntary and only 6% of European traders are members of such a scheme.

The Commissioner announced the presentation of a legislative proposal on ADR by end 2011.

Zoltan Cséfalvay, Junior Minister for Strategic Affairs at the Ministry for National Economy, also highlighted the impressive growth of ADR systems within the EU. He would welcome a more cooperative view on ADR in particular to fill the e-commerce gap. This would prevent the long, time and resource consuming procedures held at the national courts. However, he also pointed at autonomy as a key concept for ADR. The EU should therefore not regulate, but create a common framework that would include assistance to existing ADR systems by setting common standards and the creation of a Code of best practices to ensure quality and consistency. ADR should be presented as beneficial for both consumer and business, and more funds should be dedicated to it. He also noted that the Hungarian presidency is committed to raise awareness among traders and consumers.

Paola Testori Coggi, DG SANCO, underlined the important issues that need to be addressed in order to increase the confidence of Consumers, such as raising the awareness of consumers (and traders) on ADR, promoting ADR as an alternative step before going to court, and the issue of financing ADR systems.

II. ADR at the service of the Internal Market and Consumers

Andreas Schwab, MEP (IMCO, EPP, DE) emphasised that markets are about trust, especially in the field of e-commerce. A proposal for ADR discussion should focus on its main features: non-bureaucratic, flexible, avoiding accusative litigation and ability to work in cross-border situations. ADR should be low-cost and quick. A "one size fits all" approach should be avoided, however ADR should always be impartial and the interest of consumers should be put first.

Monique Goyens, Director General of BEUC stressed the need to better understand why ADR has not reached its full potential. ADR is seen as a prominent tool for consumer organisations. Consumers are often confused because of the number of different ADR schemes. "Médiateurs" provided by customer services of companies also contribute to this confusion. It would thus be useful to have a template for ADR schemes. ADR should be promoted as an alternative to court proceedings offering win-win situation for consumers and traders. Traders currently do not use ADR and have no real incentives to do so. In general she noticed a lack of compliance by businesses: only few ADR decisions are binding. Its

effectiveness depends on a company's goodwill, as there is no enforcement mechanism. Ms Goyens emphasised that ADR should be an alternative, and not a replacement of access to courts. Therefore, improvement of courts mechanisms also has to be ensured. Furthermore, ADR should be articulated in relation to collective redress mechanisms.

Louis Grech, MEP (S&D, MT, IMCO) regretted the low knowledge that citizens have of ADR systems. Mr Grech's report *A Single market for consumers and citizens* calls for the EC to provide with better mechanisms to review the exercise of consumer rights and the problems they face in cross-border situation. An ideal ADR system should provide citizens with security and confidence, and surpass all the current cross-border difficulties. Together with the proposed ADR package (end 2011), there should be a proposal for an EU-wide collective redress system.

Francis Frizon, mediator and member of FIN-NET, explained that FIN-NET groups several different ADR systems. The main idea was to avoid court proceedings in financial controversies. In Mr Frizon's view, the EU should not harmonize ADR systems, but only foster their coordination respecting their flexibility and voluntary character. Following these principles, 50 members of 22 countries have already joined FIN-NET. The main principles that should guide the EC's activities in this field are quality, respect to the consumer's trust, transparency, respect for the legal framework, promotion of equity in arrangements and conflict resolutions, respect for confidentiality of the procedure and no (or low) costs.

Diana Wallis, MEP (JURI, ALDE, UK) highlighted the fact that she already drafted a report on ADR back in 2001. However she welcomed the (renewed) efforts and pointed at the main issues to be tackled: i) Awareness- raising: the EU should offer a coherent roadmap or signposting on ADR. Furthermore ADR has to be properly funded, ii) Businesses should be encouraged to participate by pointing at ADR as "good business conduct", iii) The EC should acknowledge that proper access to redress in the internal market requires both ADR and a good system of collective redress, as both are complementary.

Tiziana Pompei, UnionCamere, Vice-president of the Italian Chamber of Commerce presented the state of play in Italy. Mediation/ADR is compulsory in certain areas such as house renting and insurance. In all, results are satisfactory as 50% of queries are solved within 2 months, and there is an increased use of voluntary ADR. In her view, ADR should be fast as this is a very good incentive for companies to comply as they otherwise will have great legal costs due to lengthy court procedures. Confidentiality and informality during the procedure should be ensured.

Questions and comments were made as regards:

- the use of languages in case of cross-border disputes.
- the funding of ADR schemes and, related, the fees for consumers
- the idea to introduce ADR as a quality label
- the need to make the application of ADR compulsory or voluntary
- the confidentiality or transparency of the procedure and the decisions
- the quality of the decisions and whether they should be binding

- the setting of a benchmark to measure the effectiveness of ADR schemes
- the principle of impartiality of ADR schemes.

III. Which way forward for the development of ADR in the EU

Sandra Kalniete, MEP (IMCO, EPP, LV), Rapporteur for the IMCO report on *Governance and Partnership in the Single Market*, indicated that ADR is one of the top 5 priorities regarding Single Market Governance. Businesses should be required to make reasonable efforts to inform their consumers when they are/are not part of an ADR scheme. Online tools, such as a EU online database, could help the consumer to find the right ADR mechanism. She mentioned that a better European Framework for ADR should also be available for small enterprises. SMEs often find themselves in the same position vis-à-vis large suppliers of goods or services as individual consumers do. The EC should draft a legislative proposal and promote its quick adoption.

Loic Armand, MEDEF, mentioned that mediation is very successful in France. In 2009 a practical guide was published by MEDEF and an internet portal on mediation procedures was launched in October 2010. He underlined that the best way to convince consumers is to publicize the benefits of ADR, charging no fee for using ADR schemes and ensuring confidentiality for the companies. ADR should also be voluntary for companies and consumers, and once initiated it should be possible to withdraw from it at any time. Finally he stressed that in France businesses are committed to make ADR work.

Raffaella Baldassarre, MEP (Vice-Chair JURI, EPP, IT) stressed that, since ADR offers an alternative to court proceedings, mediators and referees should be carefully chosen, educated and monitored. Consumer associations are key players in raising awareness, especially ECC-Net, which should have an ADR database. Regarding e-commerce, quick, cheap and online "e-DR" could play a key role in enhancing consumer trust.

Collective redress is the third pillar in guaranteeing a high protection of consumer rights, even though it is not yet a reality in the EU. Amicable conflict resolution should always be prioritized via agreements between consumer associations and companies, especially regarding similar or mass cases.

Peter Fogh Knudsen, Director of the Danish European Consumer Centre (ECC), said that in 2010, ECC-Net received 32000 cross-border cases, 60% of which had to do with e-commerce. 14000 of them were solved thanks to the cooperation between the ECC centres in the country of the consumer and in that of the traders. 21% of the problems had to do with delivery of products, what affects consumer trust.

Nonetheless, ECC centres have no enforcement powers, and many problems remain unsolved due to lack of commitment from traders. The EU should close these gaps; in cross-border cases, only 5% of complaints received can be transferred to operative ADR schemes in other Member States. As a result consumers get thus frustrated and e-commerce gets bad reputation. Similarly, the participation to ADR by the traders when it comes to cross-boarder issues should be compulsory; if the EU really wants to make a difference for consumers, voluntary ADR is not an option, according to Mr. Fogh Knudsen.

Jürgen Creutzmann, MEP (IMCO, ALDE, DE), explained that the IMCO Committee has commissioned a study on cross-boarder ADR systems. He proposed to add a reference to

ADR schemes in all contracts, both e-contracts and paper ones. Consumers have to know in advance where and how to act when they need redress Also the consumers should be able to proceed in his/her own language and should bear no costs for ADR.

Peter Moerkens, De Geschillencommissie, provided a presentation on the organisation of ADR in the Netherlands. An umbrella organisation has been set up overlooking 50 sectoral ADR schemes in 3 pillars: consumer protection, businesses, public authorities. The schemes are self-regulatory and voluntary, but if the consumer chooses ADR instead of a court, this decision is compulsory for the company in question. Everything is internet-based; after having submitted the complaint the consumer is able to follow of their case on the internet. On average the time for finding a solution is 4 months.

As regards funding, the government funds the general infrastructure, companies pay the procedural costs (so fewer complaints mean minor costs) and consumers pay €25 to €125. If the outcome is favourable to the consumer, the fees paid are reimbursed.

Mr Jorge Pegado Liz, Head of the Consumer Committee of the Economic and Social Committee (EESC), reminded the audience of the communications of the European Commission (98/1998 and 91/2001), the Green paper from April 2002, the recommendations of the Council and several EJC and ECHR. EU action is needed, but subsidiarity and proportionality are essential principles that must be applied. However common parameters for all the EU Member States should be set as regards: independence, impartiality, transparency, efficacy, legality, etcera. At the same time, Member States should allocate more resources to ADR systems and companies will have to be more involved.

Questions and comments were made as regards:

- the important role courts can play a in raising awareness
- the need of lawyers informing their clients of ADR before filing a lawsuit.
- the costs of ADR and the quality of ADR outcomes
- the resources required and the exploration of public/ private ADR funding
- the possibility of co-funding ADR schemes by insurers
- the online dimension of ADR
- the publication of annual reports on ADR schemes with yearly evaluations

IV. Closing remarks

Malcolm Harbour, MEP (IMCO, ECR, UK)

The IMCO Chair concluded the Summit by saying that the EU should work on the impressive expertise on ADR already available. Any EU initiative should not interfere with what is already working. The EU should also concentrate on cross-border controversies and offer accessible information, so consumers will know which direction to follow when a dispute had arisen.

Business should be encouraged to participate in good ADR practices, as they created satisfied loyal consumers. Confidentiality should be kept, but the outcome of the cases should be transparent and later used for feedback and improvement of goods and services.

ANNEX V: OVERVIEW OF EU LEGISLATION CONTAINING PROVISIONS ON ADR

DG	SECTOR	COMMENTS
SANCO	Financial services	<ul style="list-style-type: none"> • Directive 2008/48/EC on credit agreements for consumers Article 10(2) ; Article 24 • Directive 2002/65/EC on distance marketing of financial services: Recital 28, Article 3(4) (a) and Article 14
MARKT	Financial services	<ul style="list-style-type: none"> • Regulation 924/2009/EC on cross border payments: Recital 3, 15, 16 and Articles 10(2), 11 and 12 • Directive 2009/110/EC on the taking up, pursuit and prudential supervision of the business of electronic money institutions, Recital 19 and Article 13 • Directive 2007/64/EC on payment services: Recitals 51 and 52, Articles 42(7) (b), 80 (2) and 83 in chapter 5 on out-of-court complaint and redress procedures. • Directive 97/5/EC on cross-border credit transfers: Recitals 8 and 14 and Article 10 • Directive 2004/39/EC on Markets in financial instruments (MiFID): Recital 61, Articles 53 and 58(3) (f) • Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), Article 100 • Communication (2009) 204 final concerning packaged retail investment products does not contain any element on out-of-court procedures, but the FIN-net network is responsible for handling disputes between consumers and the financial services concerned by the Communication.
	Insurance	<ul style="list-style-type: none"> • Directive 2002/92/EC on insurance mediation : Recital 23 and Articles 11, 12(1) (e)
	Postal services	<ul style="list-style-type: none"> • Directive 2008/6/EC with regard to the full accomplishment of the Internal Market of Community postal

		services: Recital 42 and Article 19
	Ecommerce	<ul style="list-style-type: none"> • Directive 2000/31/EC on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce): Recitals 51 and 52, and Articles 1(2) and 17
	Services	<ul style="list-style-type: none"> • Directive 2006/123/EC on services in the Internal Market: Articles 21, 22(3)e) and 27(4).
MOVE	Air Passenger rights	<ul style="list-style-type: none"> • Regulation 261/2004/EC establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights: Recital 22 and Article 16 refer to a national enforcement body which may be an ADR scheme in some countries. • Regulation 1107/2006/EC concerning the rights of disabled persons and persons with reduced mobility when traveling by air, Articles 14 and 15 refer to national enforcement bodies. • Communication (2005) 046 strengthening passenger rights within the European Union: Recitals 23 and 40
	Maritime Passengers rights	<ul style="list-style-type: none"> • Regulation 1177/2010/EC concerning the rights of passengers when travelling by sea and inland waterway, Recitals 22, 23, 25, Article 25 refers to National Enforcement Bodies.
	Rail Passengers rights	<ul style="list-style-type: none"> • Regulation 1371/2007/EC on rail passengers' rights and obligations provides only for internal complaint handling systems by rail companies, Recital 18 and Article 27
	Road Passengers rights	<ul style="list-style-type: none"> • Communication (2008) 817 final on the rights of passengers in bus and coach transport, Articles 26, 27(1) and 27(3)
ENER	Energy	<ul style="list-style-type: none"> • Directive 2009/72/EC concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC: Recitals 42, 54, Articles 3(7), 3(9)c), 3(12), 3(13) and Annex I 1. (a) and (f) • Directive 2009/73/EC concerning common rules for the internal market in natural gas and repealing

		Directive 2003/55/EC: Recital 51, Articles 3(3), 3(9) and Annex I 1. (a) and (f)
JUST	Legal aid	<ul style="list-style-type: none"> • Directive 2003/8/EC to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes: Recitals 11 and 21 as well as Articles 3(2) and 10
	Transport-Passenger rights	<ul style="list-style-type: none"> • Directive 2008/122/EC on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts: Recital 21 and Article 14
INFSO	Telecom Package	<ul style="list-style-type: none"> • Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services (Framework Directive): Recitals 32, 33 and Articles 8(4) (b), 20 and 21 • Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive): Recitals 30, 47, 49, Articles 20(1), 20(2)(g) and 34 and Annex II Nr. 3 • Directive 2009/140/EC amending Directive 2002/21/EC et alia: Recitals 13 and 50, Articles 1(3) (b) inserting a paragraph 3a in Article 3 of Directive 2002/21/EC, Articles 1(22) and 1(23) amending respectively Articles 20(1) and 21 of Directive 2002/21/EC • Directive 2009/136/EC amending Directive 2002/22/EC et alia: Article 1(14) g) modifying Article 20.1 g) and Article 1(24) modifying Article 34(1), Annex II Nr. 3 • Regulation 1211/2009/EC establishing the Body of European Regulators for Electronic Communications and the Office, Article 3(1)g
	Telephony	<ul style="list-style-type: none"> • Regulation 717/2007/EC on roaming on public mobile telephone networks within the Community and amending Directive 2002/21/EC, Article 8(2) • Directive 98/10/EC on the application of open network provision (ONP) to voice telephony and on universal service for telecommunications in a competitive environment: Article 26

ANNEX VI: PRELIMINARY ANALYSIS OF ADR COVERAGE, INFORMATION AND QUALITY

This Annex forms the basis for paragraph 7.1 of the IA. It analyses separately the three problem areas in relation to ADR: i) ADR coverage, ii) information on ADR and iii) quality of ADR. Based on this preliminary analysis, these three areas are merged in paragraph 7.1 and assessed together.

The "no EU action" policy option (baseline scenario) is not taken into account in this Annex, as the analysis below aims at examining the content of the different options. It is, however, assessed in detail in paragraph 7.1.

1. ADR coverage

The options below focus on gaps in the coverage of ADR schemes, which resolve disputes between consumers and traders linked to the sale of goods and provision of services.

Option 1	Encourage interested parties to set up ADR schemes in the sectors where they do not exist.
Option 2	Ensure that ADR schemes will be set up by including ADR clauses in sector-specific legislation.
Option 3	Oblige Member States to make ADR schemes available where they do not exist.
Option 4	Create an EU Ombudsman to deal with consumer complaints.

Policy Option 1

Under the first option the Commission will encourage interested parties (e.g. businesses, consumer organisations, public authorities) to set up ADR schemes in specific sectors.

Policy Option 2

The second option is based on a sectoral approach. The Commission will include ADR clauses in sector-specific legislation. These ADR clauses will require Member States to make ADR schemes available in the sectors where they do not exist.

Policy Option 3

Under option 3 Member States will have to make ADR schemes available to deal with consumer disputes in the sectors where no ADR exists. Existing ADR schemes would remain.

Policy Option 4

Under Option 4 an Ombudsman at EU level will solve all disputes between consumers and traders in all sectors. An independent EU body to receive and examine all consumer disputes as well as provide recommendations for resolving the dispute will be established.

1.1. Analysis of impact

Assessment criteria

Each policy option is assessed against a set of criteria relating to the specific problem area. They are explained in more detail below.

Analysis of benefits

- Coverage of all business sectors by ADR: this criterion assesses whether ADR schemes will exist for all sectors.
- Impact on the number of domestic and cross border consumer disputes dealt with by ADR: this criterion assesses whether the number of consumer disputes with traders submitted to ADR will grow.
- Time needed to achieve the objectives: this criterion assesses how quickly the full coverage of ADR schemes can be achieved.

Analysis of costs

- Implementation costs: this criterion assesses the costs required to put in place the actions envisaged by each policy option, excluding costs related to the provision of information.

The options are rated according to their impact. The symbols used to rate them are explained as follows:

- --- : significantly negative effect
- -- : negative effect
- - : slightly negative effect
- 0 : no effect/no cost
- + : slightly positive effect
- ++ : positive effect
- +++ : significantly positive effect

Policy option 1

Benefits

Criteria	Effect: significantly negative to significantly positive	Explanation of impact

Coverage of all business sectors by ADR	0/+	Some gaps in ADR coverage may be filled as a result of the encouragement. However, most likely this will be done in a fragmented manner and not all retail market sectors will be covered since this will be voluntary for interested parties.
Impact on the number of domestic and cross-border consumer disputes dealt with by ADR	0/+	The number of domestic and cross-border consumer disputes dealt with by ADR may slightly increase. If ADR schemes are set up as a result of the encouragement, consumers will be able to refer their dispute. However, the increase in the number of disputes dealt with by ADR will not be satisfactory as the ADR coverage is not expected to increase substantially.
Time needed to achieve the objectives	+	The objectives may be achieved partially in the long term. The time needed will vary significantly between the different retail market sectors and can be estimated to no less than 10 years.

Costs

Criteria	Effect: significantly negative to significantly positive	Explanation of impact
Implementation costs	0/- -	Some implementation costs will occur, should interested parties decide to set up ADR schemes. These possible implementation costs will need to be divided in one-off costs (for the setting up) and recurrent (for the running of the scheme) and even these costs will differ depending on the size of the country and the number of complaints received.

Policy option 1 will have a limited impact on consumers and only as far as interested parties will decide to set up ADR schemes where they do not exist. As this will be done on a voluntary basis full coverage cannot be guaranteed. As a result consumers will still face difficulties in finding an ADR scheme competent to deal with their domestic and cross-border complaints some sectors will not be covered by ADR.

Businesses will be affected if they decide to set up and fund ADR schemes. The costs for running an ADR scheme can vary significantly between sectors and Member States and could be between €100.000 to more than €1mn annually (in very few cases such as the "Financial Services Ombudsman" in the UK or the "Mediateur des Communications Electroniques" in France). This can be done through a levy on businesses or, most frequently, through a case fee; i.e. when a complaint is submitted to an ADR scheme against a business, the latter has to pay a certain amount to the ADR scheme. This amount varies between ADR schemes (from less than €50 to more than €1000 in extreme cases). Currently, about one third of ADR schemes is funded by the industry¹⁵⁷. On the other hand, the lack of ADR schemes will also negatively affect businesses that want to use ADR to solve a consumer dispute (about 70% of businesses would prefer to solve disputes through ADR); for example about 15% wanted to use ADR but it was not available¹⁵⁸.

¹⁵⁷ Study on the use of Alternative Dispute Resolution in the European Union (ADR study), Civic Consulting, 2009p.35

¹⁵⁸ EB 278 p.73

Likewise, Member States will be affected in so far they decide to set up ADR schemes. This will be particularly acute for those Member States that have no or very few ADR schemes, as for example Bulgaria, Slovakia and Slovenia. The costs will be similar to the ones described in the second paragraph above.

Policy option 2

Benefits

Criteria	Effect: significantly negative to significantly positive	Explanation of impact
Coverage of all business sectors by ADR	+ / + +	Some gaps in ADR coverage will be covered in a fragmented manner. Depending on the adoption of sector-specific legislation a number of ADR schemes will be set up but in a patchy way. It is most likely that not all sectors will be covered. Consumers will not be able to turn to ADR for all their disputes.
Impact on the number of domestic and cross border consumer disputes dealt with by ADR	+ / + +	An increase in the consumer disputes can be expected but this will be limited. Consumers will be able to find an ADR scheme in the sectors where legislation exists. The current implementation of EU legislation shows, however, that even when the legislation requires the creation of ADR schemes this does not always happen in practice. Therefore, the increase in the number of disputes dealt with by ADR will not be satisfactory.
Time needed to achieve the objectives	+ / + +	The objectives will be achieved in the long run as not all sector specific legislation will be adopted and implemented at the same time. The time needed can be estimated to about 10 years.

Costs

Criteria	Effect: significantly negative to significantly positive	Explanation of impact
Implementation costs	- -	Implementation costs will be incurred for the sectors where an obligation to set up ADR schemes exists. Member States will have to make sure that all concerned business sectors are covered by ADR. This means that they will have to create new schemes or expand the existing ones to cover the sectors that do not yet have an ADR. This will be particularly true for Member States that have no or few ADR schemes. These costs can be estimated between €100.000 and €1mn on an annual basis for each scheme.

Policy option 2 may have a limited impact on consumers, as the current situation is not likely to improve considerably. It will be easier for consumers to turn to an ADR scheme, where EU legislation requires the development of ADR schemes. However, taking into account the implementation of current provisions of ADR the future projection is not very encouraging as Member States fall behind in creating ADR schemes even where this is required by the relevant EU legislation. In addition sector-specific legislation will lead to a patchy

development at different timings between the different sectors. Therefore, consumers will still face difficulties in finding the ADR scheme competent to deal with their complaint as gaps in some sectors will remain because not all sectors will be covered by legislation (particularly the "smaller" ones, such as clothing or electric devices).

Businesses will be affected by this option in those cases where they will have the responsibility of creating ADR. Should that be the case, their contribution will be in the funding of the ADR scheme. This can be done through a levy on businesses or, most frequently, through a case fee; i.e. when a complaint is submitted to an ADR scheme against a business, the latter has to pay a certain amount to the ADR scheme. This amount varies between ADR schemes (from less than €50 to more than €1000 in extreme cases). The costs for running an ADR scheme can vary significantly between sectors and Member States and could be between €100.000 to more than €1mn annually. Currently, about one third of ADR schemes is funded by the industry¹⁵⁹.

Similarly, Member States are likely to be affected if the creation of ADR schemes becomes mandatory. They will have to set up and/or finance the functioning of ADR schemes. The costs will be similar as to the ones described in the second paragraph above.

Policy option 3

Benefits

Criteria	Effect: significantly negative to significantly positive	Explanation of impact
Coverage of all business sectors by ADR	+++	All gaps in ADR coverage will be filled. An ADR scheme will exist for problems that consumers may face in all retail market sectors. Full coverage will be guaranteed and consumers will be able to turn to ADR for all their disputes. As a result, a significant part of consumer loss will be reduced.
Impact on the number of domestic and cross border consumer disputes dealt with by ADR	+++	Domestic and cross border consumer disputes dealt with by ADR will increase significantly. Consumers will be able to submit all their disputes to ADR thus there will be a clear impact on the number of cases.
Time needed to achieve the objectives	+++	The objectives will be achieved in a short period of time. The time needed will be minimised and is estimated to about 1 to 2 years.

Costs

¹⁵⁹ ADR study, p.35

Criteria	Effect: significantly negative to significantly positive	Explanation of impact
Implementation costs	--	Implementation costs will be incurred. Member States will have to make sure that all business sectors are covered by ADR. This means that they will have to create new schemes or expand the existing ones to cover the sectors that do not yet have an ADR. This will be particularly true for Member States that have no or few ADR schemes, such as Bulgaria, Cyprus or Slovenia.

The third policy option will have a significantly positive impact on consumers who will be able to turn to ADR for problems with purchased goods and services irrespective of the sector of the economy. As a result, more consumer problems will be raised and solved, thus leading to a reduction in consumer losses.

There will be a monetary impact on businesses, should they be required to fund the setting up or running of ADR schemes. The costs will vary depending on the sector and the size of the Member State. Some ADR schemes function with an annual budget of about €100.000 while others need more than €1mn. But at the same time, the full ADR coverage will also allow businesses to solve disputes with consumers out of court and save costs and time as well as maintain their reputation.

Member States will also be affected in so far as they will need to set up and run the ADR schemes. The costs will be similar to the ones explained in the second paragraph above.

Policy Option 4

Benefits

Criteria	Effect: significantly negative to significantly positive	Explanation of impact
Coverage of all business sectors by ADR	+++	Coverage of all sectors will be guaranteed. The European Ombudsman will deal with all consumer disputes from all Member States regarding all retail market sectors.
Impact on the number of domestic and cross border consumer disputes dealt with by ADR	++/++++	Consumer disputes dealt with by ADR will increase. Consumers will have the possibility to turn to the European Ombudsman for all their disputes and an increase in the number of cases can be expected. However, the European Ombudsman may seem too "far away" for some groups of consumers, especially for the so-called "vulnerable (elderly people, of low education etc), who would be reluctant to address their problem to an EU body.
Time needed to achieve the objectives	++	The objectives will be achieved in the long run as time will be needed to set up a new ADR body at EU level. The time needed is estimated to more than 5 years.

Costs

Criteria	Effect: significantly negative to significantly positive	Explanation of impact
Implementation costs	---	Implementation costs will be very high for the EU budget.

The fourth policy option will allow consumers to turn to the EU Ombudsman for all their complaints. They will not face any difficulty in finding the ADR scheme competent to deal with their dispute as the Ombudsman will cover all sectors. At the same time, however, an EU body might seem too distant and too "foreign" for some consumers to use.

Businesses will have the same benefits and consequences as consumers under this option. No costs will be incurred by Member States.

Finally, this option will have a vast impact on the EU budget. A new European body will need to be created which should be competent to deal with all consumer complaints in all EU languages and with specific knowledge on all business sectors and national situations. This would imply costs for the establishment of the Ombudsman and personnel costs. Even though an accurate amount for the establishment and running of a European Ombudsman cannot be given, a realistic estimate would not be lower than €1 billion annually.

1.2. Comparison of options

Benefits

Policy Options/ Criteria	Policy Option 1	Policy Option 2	Policy Option 3	Policy Option 4
Coverage of all business sectors by ADR	0/+	+ / + +	+++	+++
Impact on the number of domestic and cross border consumer disputes dealt with by ADR	0 / +	+ / + +	+++	++ / + + +
Time needed to achieve the objectives	+	+ / + +	+++	++

Costs

Policy Options/ Criteria	Policy Option 1	Policy Option 2	Policy Option 3	Policy Option 4
Implementation costs	0 / - -	- -	- -	- - -

Under Option 1 the results are uncertain and lie on the willingness of the interested parties to set up ADR schemes; the full coverage is thus not guaranteed. In Option 2 some of the sectors will be covered in a fragmented manner and at different timings depending on the sector-specific legislation. Some retail market sectors will remain with no ADR coverage. Options 3 and 4 are considered to be equally effective in terms of filling in the gaps by covering all the retail market sectors across the EU, as well as provide consumers with the same possibilities to resolve their problem out-of-court and receive compensation. However, under Option 3 the time needed to achieve the objectives is significantly shorter than the time needed under Option 4 thus leading to a quicker way to resolve the ADR coverage problem. Furthermore, the costs under Option 4 to establish and run the EU Ombudsman are very high and disproportionate. In contrast, the costs involved under Option 3 are much lower than Option 4 and thus proportionate to the objectives.

2. Information on ADR

The options below concern the provision of information to consumers in order to raise the levels of awareness about ADR and thus encourage them to use ADR in case of a dispute.

Option 1	Encourage businesses via self-regulation to inform consumers about the competent ADR scheme to deal with their case.
Option 2	Create an obligation on traders in specific sectors to provide information to consumers about the ADR scheme competent to deal with their disputes and ensure that consumers have easy access to information on all ADR schemes that exist in the EU.
Option 3	Create a general obligation on traders to provide information to consumers about the ADR schemes competent to deal with their disputes and ensure that consumers have easy access to information on all ADR schemes that exist in the EU.

Policy Option 1

Under option 1, the Commission will encourage traders to inform consumers. Businesses will, in collaboration with Member States and consumers, develop self regulatory codes of conduct to further inform consumers about the ADR scheme competent to deal with their disputes.

Policy Option 2

Option 2 is based on a sectoral approach. The Commission will include ADR clauses in every forthcoming sector-specific legislation that is relevant for disputes between consumers and businesses. These clauses will oblige traders in these sectors to provide consumers with all the necessary information they need in order to refer their disputes to the competent ADR scheme. This information will be provided on commercial documents. This option also foresees the creation of a list at Member State and EU level, where consumers will find all the necessary information on ADR schemes (e.g. contact details and website) that fall under the sector -specific legislation.

Policy Option 3

Under option 3 it will be made mandatory for businesses to provide consumers with all the necessary information in order to refer their disputes to the competent ADR scheme. This information will be provided in contracts and commercial documents. This option also foresees the creation of a list at Member State and EU level, where consumers will find all the necessary information on ADR schemes (e.g. contact details and website).

2.1. Analysis of impact

Assessment criteria

Each policy option is assessed against a set of criteria relating to the specific problem area. They are explained in more detail below.

Analysis of benefits

- Impact on the levels of consumer awareness on ADR: this criterion assesses the levels of consumers' knowledge about ADR as a result of each given policy option.
- Impact on the access to general information about ADR, in particular across borders: this criterion assesses the availability of easy-to-find, centralised information on ADR.
- Time needed to achieve the objectives: this criterion assesses how quickly the full coverage of ADR schemes can be achieved.

Analysis of costs

- Administrative costs: this criterion assesses the costs that will be incurred by businesses and public authorities in order to comply with the information obligation created by each policy option.

Policy Option 1

Benefits

Criteria	Effect: significantly negative to significantly positive	Explanation of rating
Impact on the levels of consumer awareness on ADR	0/+	Consumer awareness on ADR might slightly increase. This largely depends on how proactive businesses will be in developing self-regulatory codes of conduct to further inform consumers about the competent ADR schemes to deal with their disputes.
Impact on the access to general information about ADR, in particular across borders	0	No change is foreseen if this policy option is adopted. Consumers and businesses will continue to face problems accessing information on ADR schemes.
Time needed to achieve the	+	The objectives might be achieved in the long run; however, this depends to a large degree on the willingness of businesses to provide information

objectives		to consumers and it will be done in a fragmented way between sectors and Member States.
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Costs

Criteria	Effect: significantly negative to significantly positive	Explanation of rating
Administrative costs	0/- - -	Administrative costs may be incurred by businesses if they decide to adopt and implement a self regulatory code of conduct.

Policy option 1 may have some positive impact on consumers if businesses decide to engage in providing information but it can not be guaranteed that this will be implemented. Therefore, unless businesses develop self regulatory codes of conduct to inform consumers about competent ADR schemes to deal with their disputes consumer awareness levels will more likely remain low. Judging from the state of play and the current level of businesses' engagement information to consumers will not increase substantially.

The impact on businesses will depend on whether they will adopt and implement the self regulation. In case they do, they will incur some costs to be able to provide consumers with information. The amount will depend on the means and frequency they will decide to provide this information. For example if they decide to include information on ADR in their contracts and commercial documents, the costs can be estimated to about €797 million (€245 per business). Since this is a voluntary process the number of businesses that will actually undertake this task cannot be accurately calculated.

Member States will not bear any costs.

Policy Option 2

Benefits

Criteria	Effect: significantly negative to significantly positive	Explanation of rating
Impact on the levels of consumer awareness on ADR	++	Consumer awareness on ADR will increase but this will be limited to the sectors where EU legislation imposes an obligation for the provision of information. Thus this will be done in a fragmented manner that does not cover all sectors and at very different timings. Moreover, the creation of a list of competent ADR schemes (e.g. websites, contact details) in Member States will have a positive impact on informing consumers and businesses on what exists at EU and Member States' level.
Impact on the access to general information about ADR, in particular across borders	+++	Consumers' and businesses' access to information about competent ADR schemes will be rendered easier. By providing a list at Member State and EU level information about existing ADR schemes would flow easier across the EU benefiting both consumers and businesses who wish to resort to out of court means to resolve their disputes.

Time needed to achieve the objectives	++	The objectives will be achieved in the long run. Due to the difference between the provisions of the sector-specific legislation a concrete and common timeline cannot be foreseen. The time for the objectives to be reached could be estimated to more than 10 years.
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Costs

Criteria	Effect: significantly negative to significantly positive	Explanation of rating
Administrative costs	--	Administrative costs will occur for businesses as they will have to amend their contracts, commercial documents and websites by adding information on ADR schemes. Some administrative costs for Member States and the EU will also occur as they will have to create a list where consumers will be able to identify the ADR scheme competent to deal with their complaint.

Policy Option 2 will have a positive impact on consumers since the situation will improve. Consumers will have more and better access to information concerning competent ADR schemes to deal with their disputes and they way they function. Consumers will nevertheless continue to face some difficulties in finding information about ADR schemes competent to deal with their complaints as not all sectors will be covered by the information obligation.

This option will have an impact on the businesses of some sectors since they will be vested in complying with the obligation imposed by EU legislation in different sectors. Depending on the documents they issue and whether they run a website or not, administrative costs between businesses may vary. The estimated costs on businesses in amending their commercial documents in including information about competent ADR schemes in their sector was estimated at €797 million (€245 per business).

Member States will also be affected since the option entails the creation of a list by the Member States where consumers will be able to identify and refer to the ADR scheme competent for their case. However these costs will be very low as most Member States already have a list of ADR schemes; they would just need to update it and ensure that it is publicly available.

Lastly, this policy option will have a minimal impact on the EU budget since the already existing centralised system at EU level which provides information on various ADR schemes per Member State will simply need to be updated and improved to reflect the new set of data.

Policy Option 3

Benefits

Criteria	Effect: significantly negative to significantly positive	Explanation of rating
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Impact on the levels of consumer awareness on ADR	+++	Consumer awareness on ADR will significantly increase. By informing consumers at the point of sale and on commercial documents about the existence of the competent ADR scheme for all retail market sectors will undoubtedly make them more aware of ADR.
Impact on the access to general information about ADR, in particular across borders	+++	Consumers' and businesses' access to information about competent ADR schemes will be rendered easier. By providing a list at Member State and EU level information on the existing ADR schemes would flow easier across the EU benefiting both consumers and businesses who wish to resort to alternative means to resolve their disputes.
Time needed to achieve the objectives	+++	The time needed to achieve the objectives will be minimised and can be estimated to approximately 1-2 years.

Costs

Criteria	Effect: significantly negative to significantly positive	Explanation of rating
Administrative costs	---	Administrative costs will occur for businesses as they will have to incur costs in amending their commercial documents and websites by adding information on ADR schemes. Some costs for Member States and the EU will also occur for creating a list where consumers and businesses will be able to identify the ADR scheme competent to deal with their complaint.

Policy option 3 will have a significantly positive impact on consumers since they will have all the required information regarding the competent ADR schemes in all retail market sectors should they choose to resolve their complaint out-of-court. Businesses will be obliged to provide the necessary information to consumers at the point of sale and also on their commercial documents. Furthermore, the list that will exist in each Member States which will include all ADR schemes by sector and a centralised list at EU level will increase consumers' knowledge about the existence of ADR schemes significantly. Therefore, they will have more confidence to carry out transactions in the internal market rest assured that if a problem arises with a purchased good or service they will be able to quickly identify where to direct their claim.

An impact on businesses will occur as they will have to comply with the obligation for the provision of information to consumers imposed on them by legislation. The costs of amending the commercial documents and websites to comply with the provisions of the legislation have been calculated to approximately €797 million (€245 per business). This sum of course will vary according to the size of the company, the number of personnel they employ, the number of commercial documents they issue after a purchase and whether they run a website or not.

Member States will also be affected since the option entails the creation of a list by the Member States where consumers will be able to identify and refer to the ADR scheme competent for their case. However these costs will be very low as most Member States already have a list of ADR schemes; they would just need to update it and ensure that it is publicly available.

Lastly, this policy option will have a minimal impact on the EU budget since the already existing centralised system at EU level which provides information on various ADR schemes per Member State will simply need to be updated and improved to reflect the new set of data.

2.2. Comparison of options

Benefits

Policy Options/ Criteria	Policy Option 1	Policy Option 2	Policy Option 3
Increase in consumer's awareness on ADR	0/+	++	+++
Make it easy for consumers and businesses to have access to information concerning ADR schemes, in particular across borders	0	+++	+++
Time needed to achieve the objectives	+	++	+++

Costs

Policy Options/ Criteria	Policy Option 1	Policy Option 2	Policy Option 3
Administrative costs	0/--	--	---

Option 1 is not considered to be effective in meeting the set objectives since consumer awareness of the existence of ADR schemes will rely on a voluntary action by businesses and therefore remain low. Options 2 and 3 are considered to be equally effective in terms of providing consumers with access to the necessary information and facilitating cross-border trade. However, under Option 2, this will be the case for a limited number of sectors and the objectives will be achieved in different time periods depending on each sector specific legislation. On the contrary under Option 3 consumers will be able to receive all the information needed to refer their dispute to an ADR scheme, thus further enhancing consumer understanding and confidence and reducing consumer detriment. Option 3 is therefore most effective in reducing consumer losses and attaining the objectives more expediently compared to Option 2. As far as costs are concerned Options 2 and 3 were found to be on an equal footing.

3. Quality of ADR schemes

The options that follow examine how ADR schemes can respect certain quality criteria and be better monitored in order to boost consumers' and businesses' confidence to use them.

Option 1	Develop with stakeholders a manual on ADR quality principles based on best practices.
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Option 2	Ensure that all ADR schemes respect some core principles, such as impartiality, transparency and effectiveness, and monitor the functioning of ADR schemes.
Option 3	Design the main features that ADR schemes shall apply in order to be impartial, transparent and effective and monitor the functioning of ADR schemes.

Policy Option 1

Under the first option, the Commission will set up an expert group on ADR. The aim will be to exchange best practices and develop a manual containing the principles that should apply to ADR schemes.

Policy Option 2

Under option 2 it will be ensured that ADR schemes respect the core principles of impartiality, transparency and effectiveness. This option would oblige ADR schemes to adhere to the afore-mentioned principles. The impartiality can only be ensured if the third party cannot be subject to pressure that could influence its attitude towards the dispute. The transparency of the procedure guarantees that the parties receive all the information they need to take an informed decision before starting a procedure. The effectiveness of the procedure provides that the dispute will be solved in a quick and simple manner. In addition, Member States will monitor the development and functioning of ADR schemes. This would include providing information on ADR schemes, on the gaps in ADR coverage, data on the number of ADR cases and on the level of businesses' engagement in the ADR proceedings. Moreover, ADR schemes will have to keep open a permanent information channel with any (national) authority in charge of enforcing the application of the specific EU law (i.e. sanctioning bodies) to permit the authority to have an overview over infringements.

Policy Option 3

Option 3 requires that all ADR schemes that exist in the EU would have to respect the principles of impartiality, transparency and effectiveness. Specific rules of procedure would be common in all EU ADR schemes in order to comply with these principles. For example, the funding of ADR schemes (public or private), the characteristics of the third party (individual or collegial body), the nature of the decision (binding or not), the timing of the procedure and the costs for consumers (fixing a specific amount) would need to be prescribed. In addition, Member States will monitor the development and functioning of ADR schemes. This would include providing information on ADR schemes, on the gaps in ADR coverage, data on the number of ADR cases and on the level of businesses' engagement in the ADR proceedings. Moreover, ADR schemes will have to keep open a permanent information channel with any (national) authority in charge of enforcing the application of the specific EU law (i.e. sanctioning bodies) to permit the authority to have an overview over infringements.

3.1. Analysis of impact

Assessment criteria

Each policy option is assessed against a set of criteria relating to the specific problem area. They are explained in more detail below.

Analysis of benefits

- Impact on consumers' and businesses' confidence in using ADR: this criterion assesses whether each policy option will encourage consumers and businesses to use ADR to solve their problems more regularly.
- Impact on the number of ADR schemes that respect the core principles of impartiality, transparency and effectiveness: this criterion assesses whether existing and newly created ADR schemes will operate in an impartial, independent and effective manner as a result of each policy option.
- Impact on the effective monitoring of ADR development: this criterion assesses whether each policy option would improve the monitoring of ADR in terms of development and function.
- Time needed to achieve the objectives: this criterion assesses how quickly the full coverage of ADR schemes can be achieved.

Analysis of costs

- Implementation costs: this criterion assesses the costs required to put in place the actions envisaged by each policy option, excluding costs related to the provision of information.
- Administrative costs: this criterion assesses the costs that will be incurred by businesses and public authorities in order to comply with the information obligation created by each policy option.

Policy Option 1

Benefits

Criteria	Effect: significantly negative to significantly positive	Explanation of rating
Impact on consumers' and businesses' confidence in using ADR	0/+	Consumers' and businesses' confidence will remain at the same levels. It might slightly increase in case the guidelines have a practical application. Should that be the case ADR schemes might be encouraged to be more transparent, impartial and effective thus boosting consumers' and businesses' trust in using them.
Impact on the number of ADR schemes that respect the core principles of impartiality, transparency and effectiveness	0/+	The situation might change gradually if the guidelines provided by Member States are applied. Apart from specific national legislation in few Member States (e.g. Financial Services Ombudsman in the UK) or businesses initiatives (e.g. MEDEF in France) no guidelines have been developed at Member State level. However, the two Commission Recommendations, which could serve as guidelines, did not have a major impact.
Impact on the effective monitoring	0/+	The monitoring of ADR development will remain on low levels since no

of ADR development		change is provided for by this option.
Time needed to achieve the objectives	+	The objectives might be achieved in the long term. The time needed can be estimated at about 10 years (develop the guidelines, adopt them and implement them).

Costs

Criteria	Effect: significantly negative to significantly positive	Explanation of rating
Implementation costs	0/-	Some implementation costs will occur. The EU would have to organise meetings and fora with ADR experts to adopt guidelines. Marginal implementation costs might occur for businesses in case they fund ADR schemes. Should ADR schemes apply the principles stated in the guidelines, this would imply few costs to change some features of their structure.
Administrative costs	0	No administrative costs will occur.

The first policy option might have some impact on consumers but this would be marginal. Guidelines are not likely to change consumers' behaviour drastically but if the guidelines are applied, a marginal increase in consumers' trust in and use of ADR schemes could be observed.

No major impact is expected on businesses. Only to the extent that an ADR scheme is funded by businesses, changes in its principles as a result of guidelines could lead to few costs for businesses which would be marginal. The same applies to schemes that are publicly funded; few costs might burden Member States.

Finally, since the EU would have to set up an expert group to produce guidelines on best practices a minimal burden should be foreseen. Judging from the practice of other Commission expert groups on different subjects, the budget for this exercise would not exceed €100.000-€150.000.

Policy Option 2

Benefits

Criteria	Effect: significantly negative to significantly positive	Explanation of rating
Impact on consumers' and businesses' confidence in using ADR	+++	Consumers will feel confident to use ADR. They will be convinced that the ADR procedure is trustworthy and they will be confident to turn to ADR to solve their disputes. Similarly, businesses' engagement in ADR will increase. In addition, since their participation will be monitored they will be keen to use ADR.

Impact on the number of ADR schemes that respect the core principles of impartiality, transparency and effectiveness	+++	All ADR schemes will respect the core principles of impartiality, transparency and effectiveness. An obligation to adhere to these three principles will be imposed, thus all ADR schemes will have to follow them.
Impact on the effective monitoring of ADR development	+++	Effective monitoring will be enhanced as Member States will control the development of ADR schemes. This would include providing information on ADR schemes, on the gaps in ADR coverage, data on the number of ADR cases and on the level of businesses' engagement in the ADR proceedings.
Time needed to achieve the objectives	+++	The objectives will be achieved in the short term. The time needed can be estimated at about 1-2 years.

Costs

Criteria	Effect: significantly negative to significantly positive	Explanation of rating
Implementation costs	--	Certain implementation costs will be incurred by businesses and/or Member States. In those ADR schemes that do not yet respect the principles of impartiality, transparency and effectiveness modifications would need to be made, thus leading to some costs. For example, if an ADR scheme does not have a website, it would need to create one.
Administrative costs	--	Member States will suffer some costs for the reporting on ADR which will be limited as structures already exist (for example for notifying ADR schemes to Member States under the Recommendations).

The second policy option will have a great positive impact on consumers, who will feel better equipped and more empowered to turn to an ADR scheme. It would be easy for them to find information on a specific ADR scheme and at the same time they will be reassured that this scheme will deal with their complaint quickly and with no complications while the third party taking the decision will be fair and impartial. This will boost their confidence and allow them to turn to ADR to solve their problems and thus suffer fewer losses as a result of a purchased good or service.

Businesses will be affected in so far as they are involved in the funding of an ADR scheme. Some of the existing ADR schemes will need to adapt to the new requirements and that will possibly lead to some costs for them. These costs will be one-off and not very burdensome. However, apart from the possible costs, businesses will benefit from the same positive impact as consumers. That means they could trust that ADR schemes will solve their problem effectively and fairly; they would be more inclined as they are currently to use ADR and that can have positive effects on their reputation and on keeping their clients.

Member States will have to make sure that the principles of independence, transparency and impartiality are respected. This implies that if they fund schemes that do not yet adhere to

these principles, they would have to modify some of their structures. In addition, Member States will need to fund the monitoring activities. This will build on existing structures in the Member States; for example each Member State has an authority to scrutinise the notification of ADR schemes to the Commission. Therefore, the costs will be limited.

Policy Option 3

Benefits

Criteria	Effect: significantly negative to significantly positive	Explanation of rating
Impact on consumers' and businesses' confidence in using ADR	+++	Consumers will feel confident to use ADR. They will be convinced that the ADR procedure is trustworthy and they will be confident to turn to ADR to solve their disputes. Similarly, businesses' engagement in ADR will increase. In addition, since their participation will be monitored they will be keen to use ADR.
Impact on the number of ADR schemes that respect the core principles of impartiality, transparency and effectiveness	+++	All ADR schemes will respect the core principles of impartiality, transparency and effectiveness. An obligation to adhere to these three principles will be imposed with specific rules of procedure common to all EU ADR schemes, thus all ADR schemes will have to follow them.
Impact on the effective monitoring of ADR development	+++	The effective monitoring of ADR development will be enhanced as Member States will monitor ADR schemes. This would include providing information on ADR schemes, on the gaps in ADR coverage, data on the number of ADR cases and on the level of businesses' engagement in the ADR proceedings.
Time needed to achieve the objectives	++	The objectives will be achieved in the short term but as substantial changes will have to be made in the ADR schemes, the time needed can be estimated at about 3-5 years.

Costs

Criteria	Effect: significantly negative to significantly positive	Explanation of rating
Implementation costs	---	Significant implementation costs will occur. Member States or businesses that fund existing ADR schemes will suffer these one-off costs. Since all the features and "rules of procedure" will be prescribed, ADR schemes would need to substantially modify the way they operate to adhere to the newly imposed features. For example, it could be prescribed that cases shall be solved within 45 days; that means that ADR schemes that take longer to deal with case will have to make changes. Likewise, changes would be necessary in relation to the decision making body, the nature of the decision etc. New ADR schemes are not taken into account since they will have to be designed

		as such from the beginning.
Administrative costs	--	Member States will suffer some costs for the reporting on ADR which will be limited as structures already exist (for example for notifying ADR schemes to Member States under the Recommendations).

The third policy option will have similar impacts as the second one for consumers. Namely, the respect of the three principles will boost their confidence and allow them to turn to ADR to solve their problems; thus they will suffer fewer losses as a result of a purchased good or service.

Businesses will suffer important administrative costs as the ADR schemes that they fund would have to change substantially the way they operate and adhere to the three principles. Features such as the nature of the decision, the third party and the provision of information would have to be modified. Likewise, the possible burden for Member States will be big; however, public ADR schemes usually already accept the three principles. In addition, Member States will need to fund the monitoring activities of the competent body appointed. This will build on existing structures in the Member States; for example each Member State has an authority to scrutinise the notification of ADR schemes to the Commission. Overall the costs will be high.

3.2. Comparison of options

Benefits

Policy Options/ Criteria	Policy Option 1	Policy Option 2	Policy Option 3
Impact on consumers' and businesses' confidence in using ADR	0/+	+++	+++
Impact on the number of ADR schemes that respect the core principles of impartiality, transparency and effectiveness	0/+	+++	+++
Impact on the effective monitoring of ADR development	0/+	+++	+++
Time needed to achieve the objectives	+	+++	++

Costs

Policy Options/ Criteria	Policy Option 1	Policy Option 2	Policy Option 3
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Implementation costs	0/-	--	---
Administrative costs	0	--	--

Under Option 1 consumers' and businesses' confidence will not increase significantly and the number of quality ADR schemes will remain low. Option 2 will result in quality ADR schemes with reasonable costs while the monitoring of ADR will become more effective. Therefore, consumer and businesses will be encouraged to use more ADR and their confidence in the procedure will increase substantially. The time needed to achieve the objectives will be minimised. Finally, Option 3 similarly achieves the objectives of quality ADR and monitoring but at the same time it interferes with the flexibility and the inherent nature of ADR while imposing unnecessary costs thus making it disproportionate.

ANNEX VII: DETAILED METHODOLOGY FOR CALCULATING ADMINISTRATIVE COSTS FOR EU BUSINESSES¹⁶⁰

This Annex presents the methodology that was applied for calculating the administrative costs to EU businesses as a result of their potential obligation to inform consumers about ADR.

The estimation of the administrative costs to EU businesses was based on the core equation of the Standard Cost Model as defined in Annex 10 of the most recent IA Guidelines of the European Commission, and related guidance.¹⁶¹ This Annex specifies how this approach was adapted to take into account the specific purposes of the study.

This Annex details step-by-step the methodology employed to derive an estimate of the administrative and compliance costs incurred by EU businesses in meeting their legal obligations to provide information on ADR to consumers.

Our methodological approach included the following steps:

- Delineation of sectors relevant for the study
- Collection of data on time estimates and professional qualifications
- Validation of the data collected via interviews with businesses
- Estimation of the number of EU businesses affected by the information obligation
- Collection of data on tariffs
- Estimation of average one-off costs for EU businesses in each relevant sector
- Estimation of total costs to EU businesses

Step 1: Delineation of sectors relevant for the study

According to the study on the use of alternative dispute resolution in the European Union conducted by Civic Consulting in 2009, the sectors in which ADR cases are most frequent are as follows:

- Banking;
- Insurance;
- Investment/securities;
- Telecommunications;

¹⁶⁰ Chapter extracted from the study on "assessment of compliance costs and administrative costs/burdens on businesses linked to the use of Alternative Dispute Resolution"

¹⁶¹ See European Commission, Impact Assessment Guidelines, 15 January 2009, Annex 10. Relevant guidance includes SCM Network: International Standard Cost Model manual – Measuring and reducing administrative burdens for businesses.

- Non-food consumer goods;
- Transport (and package travel);
- Postal services; and
- Energy, water supply, and heating.

Civic Consulting’s study revealed that these sectors account for more than 90% of ADR cases in the EU. Given the limited timeframe for the current study we focused the data collection effort on these sectors.

We also reviewed the sector categories used by Eurostat, as data on the total number of EU businesses were retrieved from its databases and used for extrapolating the results for the businesses interviewed to the entire population of EU businesses. As it appeared that sector categories used by Eurostat were not fully in line with the categories used in the study on the use of alternative dispute resolution in the EU, we decided to combine some sector categories used in this study. This was to ensure that our list of sectors is compatible with the information published by Eurostat. The final list of sectors used for the research is as follows:

- Financial services (including banking, insurance, investment/securities);
- Telecommunications and postal services;
- Non-food consumer goods;
- Transport and package travel/tourism; and
- Energy, water supply, and heating.

Step 2: Collection of data on time estimates and professional qualifications

In order to collect the data needed for calculating recurring and one-off costs, 22 in-depth interviews with businesses of the sectors listed above were conducted according to an interview guide. The interviews were primarily aimed at collecting data on the average time spent by businesses on actions conducted in order to meet their legal obligations to provide ADR information to consumers. These consist of one-off actions:

One-off actions

One-off actions imply one-off costs which are **only sustained once** in connection with the business adapting to the new information obligations and to the obligations resulting from the involvement of the business in ADR procedures.

The collection of data for calculating the one-off costs was based on the assumptions described in the table below.

Table 1: List of one-off actions for businesses and related assumptions

Obligation	Required one-off action	Assumption
Information obligations of businesses		
Obligation to provide information in relation to ADR to consumers	1. Familiarisation with the information obligations	This action consists of reviewing the legislation specifying the information obligations.
	2. Defining information regarding ADR to be presented to consumers	<p>Information to be presented in commercial documents would be described in the legislation. For the purposes of the study, we used the following indicative sentence concerning the complaint procedure to allow interviewees to better grasp possible changes:</p> <p><i>‘If you have any cause for complaint, please first contact us at: ###address, phone number, e-mail address of the relevant contact###. If you are still not satisfied with the way we have handled your complaint, you may take your complaint to ###name of the ADR scheme### for further advice and guidance: ###address, phone number, e-mail address, website of the scheme###.’</i></p> <p>This sentence should be easily readable by the consumer. We assume that there would be no requirement specifying this sentence must be in a particular colour.</p> <p>This information would also be required to appear on the websites of businesses, e.g. in the relevant section regarding consumer queries.</p>
	3. Preparing summary documentation to distribute information to employees dealing with consumer complaints	Relevant information on the information obligation to consumers would be summarised (e.g. as a half-page document) and be integrated into existing communication tools usually used to distribute information to employees handling consumer complaints.
	4. Adding information on ADR to contracts, invoices, receipts, websites,	This action would consist of adding the sentence on ADR (see above) to relevant commercial documents.

	brochures/leaflets	
	5. Reproducing amended (templates of) contracts, invoices, receipts, brochures/leaflets (and possibly printing a notice to be displayed at points of sale)	<p>We assume a transition period of at least two years for the implementation of the information obligations by businesses (between adopting such legislation at EU level and the actual implementation of the requirement by businesses).</p> <p>Transportation tickets are not included.</p> <p>The size of the notice is equivalent to an A6 paper size (105 mm × 148 mm).</p>

Step 3: Validation of the data collected via interviews with businesses

We carefully reviewed the data provided by businesses on time estimates and levels of qualification needed for completing each one-off action. Interviews were often followed up with e-mail exchanges to clarify remaining issues. All interviewed business received the responses provided during the interviews in writing, so they could verify and complete the information provided.

Once the dataset was verified and validated, we also researched for each action whether patterns concerning time estimates and professional qualifications could be identified across sectors and business sizes. This process revealed that businesses in the financial services sector reported homogeneous information on time estimates and levels of qualification needed complete the actions. However, information reported by businesses of different sizes in the other sectors (telecommunications and postal services; energy, water supply, and heating; transport and package travel/tourism; and non-food consumer goods) was very diverse, and no specific groupings according to size or sector could be established according to the data collected. Therefore we focused our analysis of the assessment of the administrative costs on businesses in the financial services sector on one side, and on businesses in the other sectors on the other side.

Finally, we determined the appropriate time and level of qualification required conducting each action in the financial services sector and the other four sectors considered for the assessment. In order to reduce the importance of outliers, we applied the median to the time estimates provided by businesses to identify the time needed to complete each action. We also carefully reviewed the data reported by businesses on the professional titles of the persons completing the different tasks to determine the appropriate qualifications needed for completing each one-off action.

Step 4: Estimation of the number of EU businesses affected by the information obligation

To identify the population of EU businesses to which the information obligation would apply, we reviewed Eurostat's Structural Business Statistics (SBS), which provide information on the number of businesses according to the statistical classification of economic activities in

the European Community (NACE).¹⁶² When reviewing this database, we paid particularly attention to select only the businesses that are relevant for consumer ADR.

Table 2 below presents the number of businesses identified in the relevant sectors for the assessment.

Sector	NACE code	Sector label	Number of businesses	
Financial services	J6512_J652	Total credit institutions	7,706	(15,251) ^a
	n.a.	Insurance (excluding reinsurance enterprises)	4,255	
	J6602	Pension funding	3,290	
Telecommunications and postal services	I641	Post and courier activities	43,393	83,393
	J61	Telecommunications	40,000	
Non-food consumer goods	G4719	Other retail sale in non-specialised stores	117,433	2,263,723
	G474	Retail sale of information and communication equipment in specialised stores	98,366	
	G475	Retail sale of other household equipment in specialised stores	470,131	
	G476	Retail sale of cultural and recreation goods in specialised stores	216,738	
	G477	Retail sale of other goods in specialised stores	1,166,622	
	G4782	Retail sale via stalls and markets of textiles, clothing, and footwear	134,456	
	G4791	Retail sale via mail- order houses or via Internet	59,977	
Transport and package travel/tourism	H491	Passenger rail transport, interurban	275	667,782
	H493	Other passenger land transport	325,728	
	H501	Sea and coastal passenger water transport	3,546	

¹⁶²

See http://epp.eurostat.ec.europa.eu/portal/page/portal/european_business/introduction.

	H503	Inland passenger water transport	3,674	
	H511	Passenger air transport	3,218	
	I55	Accommodation	247,224	
	N79	Travel agency, tour operator reservation service and related activities	84,117	
Energy, water supply, heating	D3513	Distribution of electricity	2,020	21,564
	D3514	Trade of electricity	1,517	
	D3522	Distribution of gaseous fuels through mains	783	
	D3523	Trade of gas through mains	527	
	D353	Steam and air conditioning supply	4,625	
	E36	Water collection, treatment and supply	12,092	

Source: Eurostat (most recent data available; i.e. 2008 or earlier data).

Note: (a) Figure includes only businesses which belong to the categories ‘credit institutions’, ‘insurance’ and ‘pension funding’.

Step 5: Collection of data on tariffs

Concerning data on tariffs, we used the figures utilised in the context of the Action Programme for Reducing Administrative Burdens.¹⁶³ These estimates were provided by the European Commission. As these figures are only available for 2006, we applied wage development figures to obtain values for 2010.¹⁶⁴

Table 3 presents the EU average labour costs that were used for our calculations. These figures include a standard proportion of the so-called overheads costs (i.e. 25%).

¹⁶³ See: http://ec.europa.eu/enterprise/policies/better-regulation/administrative-burdens/index_en.htm. The EU database and administrative burden calculator provides tariffs for nine professional groups: (1) Legislators, senior officials, and managers; (2) Professionals; (3) Technicians and associate professionals, (4) Clerks; (5) Service workers, and shop and market sales workers; (6) Craft and related trades workers; (7) Plant and machine operators and assemblers; (8) Manual workers (agricultural and fisheries); and (9) Elementary occupations. These professional groups are based on the categories of the International Standard Classifications of Occupations. They include overhead costs (i.e. 25%) which consist of fixed administration costs such as premises, telephone, heating, electricity, and IT equipment. We have used the average tariff in the EU 27.

¹⁶⁴ Wage development figures for the period 2006 – 2010 were calculated on wage data provided by Eurostat. See: <http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&init=1&language=en&pcode=tec00014&plugin=0>.

Table 3: Average labour costs per hour in the EU (2010)

Member State	Legislators, senior officials and managers	Professionals	Technicians and associate professionals	Clerks
Belgium	57.33	39.92	30.96	26.47
Bulgaria	5.02	3.40	2.95	2.16
Czech Republic	14.67	9.87	8.00	6.13
Denmark	58.08	50.71	42.90	30.90
Germany	51.09	47.52	34.27	27.46
Estonia	9.06	8.76	6.52	4.88
Ireland	47.26	43.80	31.33	23.81
Greece	30.69	23.89	17.23	13.89
Spain	41.22	26.59	20.79	14.32
France	54.90	50.49	28.77	22.24
Italy	66.25	63.84	27.01	21.95
Cyprus	37.96	24.34	18.86	12.30
Latvia	6.38	6.33	5.84	4.07
Lithuania	7.99	6.56	4.58	3.75
Luxembourg	69.37	50.93	42.06	34.06
Hungary	12.51	8.34	6.57	5.22
Malta	19.28	15.28	13.17	10.24
Netherlands	41.54	39.65	31.37	24.72
Austria	59.10	44.44	33.50	25.62
Poland	15.52	12.36	6.89	5.98
Portugal	33.23	20.71	14.93	10.20
Romania	13.21	8.12	5.84	4.90
Slovenia	22.30	22.79	14.55	11.84

Slovakia	12.00	7.96	6.66	4.22
Finland	50.93	39.54	30.40	23.73
Sweden	57.37	45.71	35.34	25.82
United Kingdom	46.18	43.50	31.97	20.72
EU average per hour	34.83	28.35	20.49	15.61

Source: Estimates by Civic Consulting based on figures provided by the European Commission.

Note: These tariffs were used as a basis for the calculation of administrative costs in the context of the Action Programme for Reducing Administrative Burdens in 2008-2009. They include a standard proportion of the so-called overheads costs (i.e. 25%) linked with individual employees and borne by businesses but not included in their salaries: fixed administration costs such as premises, telephone, heating, electricity, and IT equipment. Professional groups are defined according to the categorisation used by the International Standard Classification of Occupations (ISCO).

Step 6: Estimation of one-off costs

One-off costs are only sustained once by businesses. They result from two types of one-off actions related to providing ADR information to consumers.

The costs resulting from the obligation to provide ADR information to consumers would be incurred by all businesses during the first year of application of the obligation. As a result, we obtain the following equation:

One-off costs for EU businesses in Year 1 = One-off costs related to the obligation to inform consumers on ADR (incurred by all businesses)

One-off costs for EU businesses resulting from the obligation to provide information in relation to ADR to consumers were calculated as follows:

$$(1) \quad \text{One-off costs related to the obligation to inform consumers on ADR for EU businesses} = Pop_{tot} \times P_O$$

$$= Pop_{tot} \times \sum_{j=1}^m (\text{One - Off Time}_j \times \text{One - Off Tariff}_j)$$

With:

Parameter	Definition	Source of information
Pop_{tot}	Total population (i.e. total number of businesses affected by the information obligation)	Eurostat (Structural Business Statistics - SBS)
P_O	One-off cost related to the obligation to inform consumers on ADR	See below (One-Off Time _j and One-Off Tariff _j)

<i>One-Off Time_j</i>	<i>Time spent on one-off action j (i.e. time needed to complete one-off action j related to the obligation to inform consumers on ADR)</i>	<i>In-depth interviews</i>
<i>One-Off Tariff_j</i>	<i>Tariff for one-off action j (i.e. wage cost to complete action j plus overhead)</i>	<i>Tariffs are obtained from the EU database and administrative burden calculator. They include an overhead percentage of 25%.¹⁶⁵</i>
<i>m</i>	<i>Number of one-off actions related to the obligation to inform consumers on ADR</i>	<i>See Table 1 above</i>

In the area of financial services, the one-off costs related to the obligation to inform consumers about ADR are likely to be insignificant (see step 5 above). The relevant population for the calculation of these one-off costs corresponds to businesses in the other four sectors considered for the assessment (telecommunications and postal services; energy, water supply, and heating; transport and package travel/tourism; and non-food consumer goods). According to Eurostat, there are 3,139,643 businesses in these sectors.

Step 7: Estimation of total costs to EU businesses

As a final step, we estimated the administrative costs incurred by EU businesses in meeting their legal obligations to provide information on ADR to consumers, as follows:

Total cost to EU businesses in Year 1 =

Sum of one-off costs related to the obligation to inform consumers about ADR (incurred by all businesses)

Obligations and related actions for EU businesses

The obligation relevant for this assessment is the obligation of EU businesses to provide information in relation to ADR to consumers.

Table 4 provides an overview of the required actions and types of cost. This list has been prepared on the basis of the information gathered via the review of relevant studies, reports, and policy documents; exploratory interviews; and comments provided by the European Commission.

¹⁶⁵ According to the International Standard Cost Model Manual published by the SCM Network (see: SCM Network: International Standard Cost Model Manual – Measuring and reducing administrative burdens for businesses), an overhead percentage of 25% has been applied in most measurements so far. The overhead covers costs in connection with fixed administration costs, such as expenses for premises, telephone, heating, electricity, and IT equipment.

Table 4: List of obligations, actions and related costs

Obligation	Required action	Type of cost	
		One-off/ recurring	Administrative/ compliance
Information obligations of businesses			
Obligation to provide information in relation to ADR to consumers	1. Familiarisation with the information obligations	One-off	Administrative
	2. Defining information regarding ADR to be presented to consumers	One-off	Administrative
	3. Preparing summary documentation to distribute information to employees dealing with consumer complaints	One-off	Administrative
	4. Adding information on ADR in contracts, invoices, receipts, websites, brochures/leaflets	One-off	Administrative
	5. Reproducing changed (templates of) contracts, invoices, receipts, brochures/leaflets	One-off	Administrative

Data collection

The assessment of administrative and compliance costs was mainly informed by in-depth interviews with business representatives. In addition, complementary data was collected in order to extrapolate the data collected during the interviews.

Interviews

The interviews primarily aimed to collect data on the time spent by businesses on (1) actions conducted in order to meet their legal obligations to provide information in relation to ADR to consumers, and (2) actions performed as a result of their involvement in an ADR procedure, as well as on the level of qualification of the employees performing these actions.¹⁶⁶

A total of 27 interviews were conducted¹⁶⁷ – 22 with businesses (see tables presenting interview results in Annex IV),¹⁶⁸ 4 with ADR schemes, and 1 with a financial services authority.

¹⁶⁶ Information on the qualifications of employees was collected according to the professional groups defined by the International Standard Classification of Occupations (ISCO); i.e. managers, professionals, technicians and associate professionals, and clerks.

¹⁶⁷ Of these 27 interviews, 3 were conducted during the preparatory phase of the study.

The 22 interviews with businesses involved companies which have used ADR in the following sectors:

- Financial services;
- Telecommunications and postal services;
- Non-food consumer goods;
- Transport and package travel/tourism; and
- Energy, water supply, and heating.

Civic Consulting’s study on the use of alternative dispute resolution in the European Union (Civic Consulting, 2009; ‘2009 study’ hereafter) revealed that these sectors account for more than 90% of ADR cases in the EU.¹⁶⁹ Given the limited timeframe for the cost assessment we focused the data collection effort on the five sectors listed above.

The 4 interviews conducted with ADR schemes aimed to develop better insight into the typical burdens imposed on a business by the ADR process and to check the accuracy of the time estimates provided by businesses.

Number of EU businesses relevant for consumer ADR

To identify the population of EU businesses to which the information obligation would apply, we reviewed Eurostat’s Structural Business Statistics (SBS), which provide information on the number of businesses according to the statistical classification of economic activities in the European Community (NACE).¹⁷⁰ When reviewing this database, we paid particularly attention to select only the businesses that are relevant for consumer ADR.

Table 5 presents the number of businesses identified in the relevant sectors for the assessment.

Table 5: Number of businesses in relevant sectors

Sector	Number of businesses
Financial services	(15,251) ^a
Telecommunications and postal services	83,393
Non-food consumer goods	2,263,723 ^b
Transport and package travel/tourism	667,782
Energy, water supply, heating	21,564

Source: Eurostat (most recent data available; i.e. 2008 or earlier data). See Annex II for more detail.

¹⁶⁸ One of these interviews was an e-mail interview. Two additional interviews were conducted with businesses but no summary tables could be prepared for these interviews as interviewees could not provide time estimates.

¹⁶⁹ Civic Consulting (2009): Study on the use of Alternative Dispute Resolution in the European Union (available at: http://ec.europa.eu/consumers/redress_cons/adr_study.pdf).

¹⁷⁰ See http://epp.eurostat.ec.europa.eu/portal/page/portal/european_business/introduction.

Notes: (a) Figure only includes businesses which belong to the categories ‘credit institutions’, ‘insurance’ and ‘pension funding’.

(b) The number of businesses in the non-food consumer goods sector includes the categories ‘retail sale of information and communication equipment in specialised stores’, ‘retail sale of other household equipment in specialised stores’, ‘retail sale of cultural and recreation goods in specialised stores’, ‘retail sale of other goods in specialised stores’, ‘retail sale via stalls and markets of textiles, clothing, and footwear’, ‘retail sale via mail-order houses or via Internet’ and ‘other retail sale in non-specialised stores’. Excluded are businesses in the area of sales, maintenance, and repair of motor vehicles.

Information on tariffs

We used the tariffs (hourly labour costs) utilised in the context of the Action Programme for Reducing Administrative Burdens.¹⁷¹ These estimates were provided by the European Commission. As these figures are only available for 2006, we applied wage development figures to obtain values for 2010.¹⁷²

Table 6 presents the EU average labour costs that were used for our calculations. These figures include a standard proportion of the so-called overheads costs (i.e. 25%).

¹⁷¹ See: http://ec.europa.eu/enterprise/policies/better-regulation/administrative-burdens/index_en.htm. The EU database and administrative burden calculator provides tariffs for nine professional groups: (1) legislators, senior officials, and managers; (2) professionals; (3) technicians and associate professionals, (4) clerks; (5) service workers, and shop and market sales workers; (6) craft and related trades workers; (7) plant and machine operators and assemblers; (8) manual workers (agricultural and fisheries); and (9) elementary occupations. These professional groups are based on the categories of the International Standard Classifications of Occupations. They include overhead costs (i.e. 25%) which consist of fixed administration costs such as premises, telephone, heating, electricity, and IT equipment. We have used the average tariff in the EU 27.

¹⁷² Wage development figures for the period 2006 – 2010 were calculated on wage data provided by Eurostat. See: <http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&init=1&language=en&pcode=tec00014&plugin=0>

Table 6: Average labour costs per hour in the EU (2010)

Member State	Managers	Professionals	Technicians and associate professionals	Clerks
Belgium	57.33	39.92	30.96	26.47
Bulgaria	5.02	3.40	2.95	2.16
Czech Republic	14.67	9.87	8.00	6.13
Denmark	58.08	50.71	42.90	30.90
Germany	51.09	47.52	34.27	27.46
Estonia	9.06	8.76	6.52	4.88
Ireland	47.26	43.80	31.33	23.81
Greece	30.69	23.89	17.23	13.89
Spain	41.22	26.59	20.79	14.32
France	54.90	50.49	28.77	22.24
Italy	66.25	63.84	27.01	21.95
Cyprus	37.96	24.34	18.86	12.30
Latvia	6.38	6.33	5.84	4.07
Lithuania	7.99	6.56	4.58	3.75
Luxembourg	69.37	50.93	42.06	34.06
Hungary	12.51	8.34	6.57	5.22
Malta	19.28	15.28	13.17	10.24
Netherlands	41.54	39.65	31.37	24.72
Austria	59.10	44.44	33.50	25.62
Poland	15.52	12.36	6.89	5.98
Portugal	33.23	20.71	14.93	10.20
Romania	13.21	8.12	5.84	4.90
Slovenia	22.30	22.79	14.55	11.84
Slovakia	12.00	7.96	6.66	4.22
Finland	50.93	39.54	30.40	23.73
Sweden	57.37	45.71	35.34	25.82
United Kingdom	46.18	43.50	31.97	20.72
<i>EU average per hour</i>	34.83	28.35	20.49	15.61

Source: Estimates by Civic Consulting based on figures provided by the European Commission.

Note: These tariffs were used as a basis for the calculation of administrative costs in the context of the Action Programme for Reducing Administrative Burdens in 2008-2009. They include a standard proportion of the so-called overheads costs (i.e. 25%) linked with individual employees and borne by businesses but not included in their salaries: fixed administration costs such as premises, telephone, heating, electricity, and IT equipment.

Data analysis

Review of the data collected

We carefully reviewed the data provided by businesses on time estimates and levels of qualification needed for completing each recurring and one-off action. Interviews were often followed up with e-mail exchanges to clarify remaining issues. All business interviewed received the responses provided during the interviews in written form so they could verify and complete the information provided.

Once the dataset was verified and validated, we also researched for each action whether patterns concerning time estimates and professional qualifications could be identified across sectors and business sizes. This process revealed that businesses in the financial services sector reported consistent information on time estimates and levels of qualification needed for completing the actions. However, the information reported by businesses of different sizes in the other sectors (telecommunications and postal services; energy, water supply, and heating; transport and package travel/tourism; and non-food consumer goods) was very diverse and no specific groupings according to size or sector could be established according to the data collected. We therefore focused our analysis on the assessment of the administrative and compliance costs to businesses in the financial services sector on one side, and businesses in the other sectors on the other side.

We finally determined the appropriate time and level of qualification required to conduct each action in the financial services sector and the other sectors considered in the assessment. In order to reduce the importance of outliers, we applied the median to the time estimates provided by businesses to identify the time needed to complete each action. We also carefully reviewed the data reported by businesses on the professional titles of the persons completing the different tasks to determine the appropriate qualifications needed for completing each recurring and one-off action.

Extrapolation of validated data to EU level

As a last step, we extrapolated the results of the validated data to the EU level by applying the core equation of the Standard Cost Model (see Annex II).

The Standard Cost Model provides that costs to EU businesses are calculated by multiplying the average cost of the required action (Price, P) by the total number of actions performed per year (Quantity, Q). This is expressed in the following equation:

$$\text{Cost to EU businesses} = P * Q$$

With P being calculated by multiplying average tariffs by the time needed required per action; and

Q being calculated by multiplying the frequency of the action per business by the number of relevant businesses in the EU.

Administrative costs incurred by EU businesses in meeting their legal obligations to provide information on ADR to consumers include one-off costs. The core equation of the Standard Cost Model has therefore been adapted to suit the purposes of the assignment as described in the Terms of Reference for the study and to reflect the difference between one-off and recurring costs. In line with the relevant EU guidance, and because of the limited number of Member States covered by the interviews, we performed the extrapolation without providing specific estimates for each Member State.

Main findings on administrative costs

Table 7 below provides an overview of the costs that would be incurred by EU businesses during the first year of implementation of the information obligation.

Table 7: Total administrative and compliance costs for EU businesses in Year 1

Obligation	Required action	Frequency of action (per year)	Estimated cost of action for all EU businesses ^a (in Euro)
Information obligations of businesses			
Obligation to provide information in relation to ADR to consumers	1. Familiarisation with the information obligations	One-off	191,839,351
	2. Defining information regarding ADR to be presented to consumers	One-off	95,919,676
	3. Preparing summary documentation to distribute information to employees dealing with consumer complaints	One-off	215,819,270
	4. Adding information on ADR in contracts, invoices, receipts, websites, brochures/leaflets	One-off	266,972,022
	5. Reproducing changed (templates of) contracts, invoices, receipts, brochures/leaflets	One-off	Not significant ^b
Total one-off costs incurred by all EU business as a result of the obligation to inform consumers on ADR:			770,550,319

One-off costs

Main findings one-off costs

One-off costs are only sustained once by businesses. They result from two sorts of one-off actions related to the provision of information in relation to ADR to consumers.

The costs resulting from the obligation to provide information on ADR to consumers would be incurred by all businesses during the first year of application of the obligation,.

As shown in Table 1 below, the total one-off costs for EU businesses would amount to €770,550,319. These figures are very likely to overestimate the ‘true’ value of administrative and compliance costs for EU businesses. Also, in line with the IA Guidelines of the European Commission and related guidance,¹⁷³ we have assumed full compliance with the obligations of all companies concerned. However, it is possible that in practice not all relevant EU businesses will, for example, add the information on ADR in their contracts, invoices, and websites during the first year of application of the obligation. It is therefore likely that these costs will be distributed over several years.

Table : One-off costs for EU businesses in Year 1

Obligation	Required action	Estimated cost of action for all EU businesses ^a (in Euro)	% of total one-off costs
Information obligation of businesses			
Obligation to provide information in relation to ADR to consumers	1. Familiarisation with the information obligation	191,839,351	22% to 23%
	2. Defining information regarding ADR to be presented to consumers	95,919,676	11% to 12%
	3. Preparing summary documentation to distribute information to employees dealing with consumer complaints	215,819,270	25% to 26%
	4. Adding information on ADR in contracts, invoices, receipts, websites, brochures/leaflets	266,972,022	31% to 33%
	5. Reproducing changed (templates of) contracts, invoices, receipts, brochures/leaflets	Not significant ^b	0%
Total one-off costs incurred by all EU business in Year 1 as a result of the obligation to inform consumers about ADR:		770,550,319	90% to 94%

One-off costs related to information obligation on consumer ADR

We assume full compliance of relevant EU businesses with the information obligation, as recommended by relevant guidelines. All relevant EU businesses would therefore conduct the

¹⁷³ See European Commission, Impact Assessment Guidelines, 15 January 2009, Annex 10. Relevant guidance includes SCM Network: International Standard Cost Model manual – Measuring and reducing administrative burdens for businesses.

one-off actions related to the obligation to inform consumers on ADR in the first year of application of the obligation.

The completion of these one-off actions by all relevant EU businesses would induce a total administrative cost of €771 million (€254 per business). This cost would only be incurred once by businesses.

In the area of financial services, the one-off costs related to the obligation to inform consumers on ADR are likely to be insignificant. This was suggested by all businesses interviewed in the financial services sector, which found that the one-off actions conducted as a result of the information obligation would not create additional efforts for them.

Table 9 provides the results of the interviews concerning the time estimates and levels of qualification needed for completing each one-off action directly resulting from the information obligation. It also details the estimated administrative cost for each action per business and for all EU relevant businesses.

Table 9: One-off costs related to the obligation to inform consumers about ADR

Required action	Professional title of employee conducting action ^a	Staff time spent on action (in minutes) ^b	Estimated cost of action per business (in Euro)	Estimated cost of action for all EU businesses ^c (in Euro)
1. Familiarisation with the information obligations	Managers/ Professionals ^d	120	63	191,839,351
2. Defining information regarding ADR to be presented to consumers	Managers/ Professionals ^d	60	32	95,919,676
3. Preparing summary documentation to distribute information to employees dealing with consumer complaints	Managers/ Professionals ^d	135	71	215,819,270
4. Adding information on ADR in contracts, invoices, receipts, websites, brochures/leaflets	Clerks/ Professionals ^d	240	88	266,972,022
5. Reproducing changed (templates of) contracts, invoices, receipts, brochures/leaflets		Not significant ^e	Not significant ^e	Not significant ^e
Total:		555	254	770,550,319

Source: Civic Consulting.

Notes: (a) Professional groups and related tariffs are based on the data utilised in the context of the Action Programme for Reducing Administrative Burdens.

(b) Median values of reported time estimates by businesses.

(c) Relevant businesses include businesses in the sectors of financial services, telecommunications and postal services; energy, water supply, and heating; transport and package travel/tourism; and non-food consumer goods. In the area of financial services, the one-off costs related to the obligation to inform consumers on ADR are likely to be insignificant.

(d) 50% of each category.

(e) Under the assumption of a transition period of two years for the implementation of the information obligation by businesses.

As shown in the table above, the obligation to provide information in relation to ADR to consumers results in the following actions for businesses:

- Familiarisation with the information obligation (i.e. reviewing the legislation specifying the information obligation);
- Defining information regarding ADR to be presented to consumers (including the identification of the relevant ADR scheme);¹⁷⁴
- Preparing summary documentation to distribute information to employees dealing with consumer complaints;
- Adding information on ADR to contracts, invoices, receipts, websites, brochures/leaflets; and
- Reproducing changed (templates of) contracts, invoices, receipts, brochures/leaflets.

As a first step, businesses would need to become familiar with the new information obligation and review the relevant legislation. Interviews with businesses indicate that two hours would be needed for a manager or a professional to complete this action. This would induce a cost of 63 Euro per business based on average EU labour costs (191 million Euro for all EU businesses).

As a second step, the business would define the information regarding ADR to be presented to consumers. The business would need to identify the competent ADR scheme in order to be able to provide this information to its clients. Interviews with businesses indicate that this action would be the least time-consuming of all one-off actions (one hour per business) and also the least costly (32 Euro per business).

As a third step, employees who deal with consumers complaints would need to be informed about the possibility for consumers to contact the competent ADR scheme in case of a dispute, so that they can provide this information to consumers. For example, the business may provide to relevant employees a short document describing the possibility for a

¹⁷⁴ We assume that a central registry would be available.

consumer to contact the competent ADR scheme in case s/he is not satisfied with the way the business has handled his/her complaint. The results of the interviews suggest that this action would be completed by a manager or a professional in slightly more than two hours. This would generate a cost of 71 Euro per business.

As a fourth step, the business would add the information on ADR to its contracts, invoices, receipts, websites, and brochures/leaflets. Interviews with businesses indicate that this action would be the most time-consuming (four hours) of all one-off actions related to the obligation to inform consumers on ADR. It would also be the most costly (88 Euro per business). Several businesses interviewed were of the opinion that brochures and leaflets do not constitute an adequate means to inform consumers about ADR. They considered these documents as marketing materials which primarily aim to present their products and services. Adding information on consumer ADR in a leaflet or brochure would take a half-hour on average, according to the information provided by three businesses that could provide such estimates. If we assume that updating leaflets and brochures would be performed by ‘technicians and associate professionals’, as suggested by the data collected, the cost of adding information on consumer ADR in leaflets and brochures would amount on average to 9 Euro per type of brochure or leaflet.¹⁷⁵ One small business indicated that adding a paragraph on consumer ADR to the template of its invoices would be done by an external company, which would charge 70 Euro for completing this task.

As a final step, the business would need to reproduce the amended templates of contracts, invoices, receipts, and brochures/leaflets. All businesses interviewed reported that templates of these documents are printed on demand or reprinted at least once every two years. Reproducing the amended templates of contracts, invoices, receipts, and leaflets/brochures therefore would not imply any additional effort for EU businesses, under the assumption that a transition period of at least two years for the implementation of the information obligation would be granted to them.¹⁷⁶

We also asked interviewees about the cost of printing a notice to inform consumers about ADR to be displayed at points of sale.¹⁷⁷ The data collected suggest that the printing cost of a notice is very low (about 0.10 Euro per copy or less).¹⁷⁸ In addition, interviews with businesses revealed that not all EU businesses may incur this cost. For example, some businesses may already display posters that include information on ADR in their points of sale, as reported by a Romanian mobile phone operator.¹⁷⁹ In other countries, businesses may regularly print posters to comply with their legal obligations. This is the case for example in

¹⁷⁵ This figure may differ significantly across businesses, as some businesses may have to update more documents than others.

¹⁷⁶ However, in some cases it may not be possible for businesses to provide updated terms and conditions to consumers within this transition period. For example, one business in the sector of mobile telecommunications noted that SIM cards sold for prepaid mobile services are offered in sealed packages which contain the terms and conditions of sale. It may be possible that even after the end of the transition period, the stock of SIM cards available in a shop would not be fully renewed, and that a consumer would purchase a SIM card without the new ADR information.

¹⁷⁷ It is assumed that the size of the notice would be equivalent to an A6 paper size (105 mm × 148 mm).

¹⁷⁸ This figure is based on the information reported by a network of travel agencies which estimated that the total cost of printing a notice for each of its 1,800 points of sale would amount to 190 Euro (i.e. 0.10 Euro per notice). Printing costs for black and white copies from commercial printers are typically lower.

¹⁷⁹ According to this business, Romanian telecommunications companies are obliged by law to display posters in their shops which provide information on consumer rights, including ADR.

Denmark, where banks must display posters in their branches to inform consumers about prices of most common products. If information on consumer ADR were added to such documents, Danish banks would not incur any additional cost, as these posters already must be regularly reprinted to update the price information. Against this background and the low cost of printing a notice, we can conclude that displaying a small notice on consumer ADR at points of sale would not create significant costs for businesses. This cost therefore has not been included in Table 9 above.

ANNEX VIII: IMPACT ON FUNDAMENTAL RIGHTS

With the entry into force of the Treaty of Lisbon on 1 December 2009, the Charter of Fundamental Rights of the European Union ('the Charter')¹⁸⁰ has become legally binding. All legislative proposals of the Commission are subject to a systematic check to ensure their compliance with the Charter¹⁸¹. This annex assesses the impact on the following relevant fundamental rights embodied in the Charter:

- **Consumer protection (Article 38 of the Charter)**¹⁸²

The Alternative Dispute Resolution initiative will contribute to ensure a high level of consumer protection by providing consumers cheap and quick non judicial means to solve their disputes with traders both for national and cross-border disputes. This initiative will make sure that consumers can access quality ADR schemes or schemes that respect certain standards, such as impartiality, transparency and effectiveness. These principles will guarantee a fair outcome for consumers. They will also guarantee that consumers will receive all the information they need to take an informed decision before starting the procedure. Finally, the procedure will be free of charge or of low costs for consumers, quick and simple. While all policy options ensure a high level of consumer protection, as required by Article 38 of the Charter, as regards the Alternative Dispute Resolution policy options 3 (binding legal instrument providing for the establishment of ADR schemes) and 4 (a standard EU ADR model) and as regards the Online Dispute Resolution policy options 3 (an EU web-based system) and 4 (single ODR body at EU level) promote this right further, by providing the possibility for consumers to refer all their domestic and cross-border disputes to quality ADR/ODR schemes.

- **Right to an effective remedy (Article 47 of the Charter)**

All policy options on ADR and on Online Dispute Resolution (ODR) respect the right to an effective remedy. The policy options on ADR/ODR do not affect the right of consumers or businesses to an effective remedy. None of the policy options deprives consumers and businesses of their right to go to court in case their rights and freedoms guaranteed by EU law are violated. ADR schemes are not designed to replace court procedures but to offer consumers and businesses a complementary tool to solve their disputes before going to court, if necessary. Recourse to ADR before going to court will not be made a mandatory first step. In addition, the initiative will set common standards for ADR/ODR schemes along the lines of standards under the right to a fair trial. ADR schemes have to be impartial, disputes shall

¹⁸⁰ OJ 2010 C 83/02, 389

¹⁸¹ Communication from the Commission Strategy on the effective implementation of the Charter, COM(2010) 573 final, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0573:FIN:EN:PDF>

¹⁸² Union policies must ensure a high level of consumer protection. This right is based on Article 169 TFEU, according to which "the Union shall contribute to protecting the ... economic interests of consumers, as well as to promoting their right to information [and] education".

be dealt with in a short period of time, and the parties should not be prevented from being represented or assisted.

- **Protection of personal data (Article 8 of the Charter) and Respect for private and family life (Article 7 of the Charter)**

Article 7 of the Charter guarantees everyone the right to respect for his or her private and family life, home and communications. Article 8 of the Charter of Fundamental Rights of the European Union expressly recognises the fundamental right to the protection of personal data of any natural person.

The initiative foresees the development of an IT platform to deal with disputes between consumers and traders related to e-commerce transactions. This platform will process personal data, at this stage- in particular names, addresses, telephone numbers and e-mail addresses of the parties. All the necessary steps will be taken to guarantee that personal data will be processed in line with the EU data protection legislation¹⁸³, in particular fairly and for the purpose of dealing with the disputes, and will not be made available to the public. The parties will in particular be informed and each party will be able to access its personal data and to rectify it. The platform will enable confidential and secure communication under the supervision of the European Data Protection Supervisor and national data protection supervisory authorities.

As mentioned in paragraph 7.1 of the IA, the flexibility and voluntary nature of ADR can weaken the efficiency of ADR for consumers, due to the lack of involvement of the trader in the ADR procedure, leaving consumers with their problem unresolved. It is therefore important to create incentives for businesses to engage in the ADR process. . One of these incentives may include the publication of yearly statistics on traders that refuse to take part in the ADR process or to comply with an ADR outcome. The publication will always be made on the basis of objective criteria, in particular the fact that the trader is not part of the ADR scheme, that the trader, because of the voluntary nature of ADR, refused to engage in the ADR procedure or that the trader did not comply with the ADR outcome. .

¹⁸³ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data; OJ L 281 , 23/11/1995, p.31.

ANNEX IX: OVERVIEW OF COSTS AND BENEFITS OF THE POLICY OPTIONS IN MONETARY TERMS

Tables I and II summarise the costs and benefits in monetary terms of each policy option, as examined in paragraphs 7.1 and 7.2

I) ADR coverage, information and quality

<i>Policy Options</i>	<i>Costs (in million euro)</i>			<i>Benefits (in billion euro) (in terms of consumer savings)</i>
	<i>Implementation</i>	<i>Administrative</i>	<i>Total</i>	
Policy Option 1	0	0	0	0
Policy Option 2	0 to depending (€0.1 to more than €1 million per scheme)	0 - €771	0 - €1.771.000	0 to €20 billion ¹⁸⁴
Policy Option 3	Depending (€0.1 to more than €1 million per scheme)	up to €771	€1.771.000	€20 billion
Policy Option 4	Depending (€0.1 to more than €1 million per scheme)+ additional costs for adjustment to the EU ADR model (it is not possible to quantify these adjustment costs due to lack of available relevant data)	up to €771	> €1.771.000	up to €20 billion

¹⁸⁴ Representing 0.17% of EU GDP

II) Online Dispute Resolution for cross-border e-commerce transactions

<i>Policy Options</i>	<i>Costs (in million euro)</i>			<i>Benefits (in billion euro) (in terms of consumer savings)</i>
	<i>Implementation</i>	<i>Administrative</i>	<i>Total</i>	
Policy Option 1	0	0	0	0
Policy Option 2	€0.1 for EU budget + costs for Member States for making available ADR schemes for cross border e-commerce transactions. These costs can vary significantly between Member States and they cannot be accurately estimated due to lack of data. There are no ADR schemes in Member States dealing exclusively with cross-border e-commerce transactions. Judging from few examples of schemes dealing with either cross-border or online cases (e.g. Risolvi Online in Italy or A.M.C.E in France) an average cost for the establishment could be about €0.5 million and the running costs between €0.05 and €0.3 million.	0	Up to €900.000	0 - €2.5 billion ¹⁸⁵
Policy Option 3	€ 2 million for the establishment + €0.3 million for annual running costs +€1million for ECC network	0	€3,3million (the first year),-€1.3 million annually	€2.5 billion
Policy Option 4	€ 2 million for the establishment + €3 million annually	0	€5 million (the first year), €3,5 million annually	up to €2.5 billion

¹⁸⁵ Representing 0.17% of EU GDP

ANNEX X: MAPPING EXERCISE ON EXISTING ADR SCHEMES FOR FOUR MAIN SECTORS (ENERGY, TRANSPORT AND TOURISM, TELECOMMUNICATIONS AND FINANCIAL SERVICES)

ENERGY

No	MEMBER STATE	ADR BODY	COMMENTS
1	Austria	ENERGIE-CONTROL GMBH	General - public ADR
2	Belgium	Service de médiation de l'Energie	Sector specific - public ADR
3	Bulgaria	Arbitration Court at the Bulgarian Chamber of Commerce and Industry, Mediation Centre	General – private ADR
4	Cyprus		
5	Czech Republic	ADR platform within the Ministry of Industry and Trade	Public ADR
6	Denmark	Energy Supplies Complaint Board	Private ADR
7	Estonia	The Consumer Complaints Committee (CCC)	General - public ADR
8	Finland	Consumers Complaints Board (Kuluttajariitalautakunta)	General – public ADR
9	France	<ul style="list-style-type: none"> • Médiateur National de l'Energie • Médiation d'Electricité de France (Le médiateur EDF) • Médiateur de GDF SUEZ 	General – public ADR Sector specific – public ADR General
10	Germany	Verbraucherzentrale Bundesverband	General- Public ADR

11	Greece	The Hellenic Consumers' Ombudsman (Sinigoros tou Katanaloti)	General - public ADR
12	Hungary	Arbitration Boards	General - public ADR
13	Ireland	Commission for Energy Regulation	Sector specific – public ADR
14	Italy	Enel ADR	Sector specific – private ADR
15	Latvia	Consumer Complaints handling of the Consumer Rights Protection Centre (PTAC)	General – public ADR
16	Lithuania	<ul style="list-style-type: none"> • The State Energy Inspectorate under the Ministry of Economy • The National Control Commission for Prices and Energy 	Public ADR Public ADR
17	Luxembourg		
18	Malta		
19	Netherlands	Disputes Committee on Energy and Water works (organised under the Foundation for Consumer Complaints Board)	Sector specific – private ADR
No	MEMBER STATE	ADR BODY	COMMENTS
20	Poland	Ombudsman at the Energy Regulatory Office (disputes with fuel gas and energy suppliers)	Sector specific – public ADR
21	Portugal	Entidade Reguladora dos Servicos Energeticos (electricity sector)	Sector specific – public ADR
22	Romania	National Authority for Consumer Protection	Public ADR
23	Slovakia		

24	Slovenia		
25	Spain	National Consumer Arbitration Board and Regional Juntas Arbitrales de Consumo	General – public ADR
26	Sweden	The National Board for Consumer Complaints (ARN)	General – public ADR
27	United Kingdom	Energy Ombudsman	General – public ADR

TRANSPORT & TOURISM

No	MEMBER STATE	ADR BODY - AVIATION	COMMENTS
1	Austria		
2	Belgium	Commission des disputes de voyages	Sector specific – private ADR
3	Bulgaria	Arbitration Court at the Bulgarian Chamber of Commerce and Industry Mediation Centre	General – private ADR
4	Cyprus		
5	Czech Republic		
6	Denmark	Travel Industry Complaints Board	Sector specific – private ADR
7	Estonia	The Consumer Complaints Committee (CCC)	General – public ADR
8	Finland	The Consumer Complaints Board	General – public ADR
9	France	Ombudsman appointed to deal with air passengers' complaints following volcanic ash	Sector specific – public ADR

		disruption	
10	Germany	Schlichtungsstelle Mobilitaet (The Conciliation Body for Long-Distance Travel)	Sector specific – public ADR
11	Greece	The Hellenic Consumers' Ombudsman (Sinigoros tou Katanaloti)	General – public ADR
12	Hungary	Arbitration Boards	General – public ADR
13	Ireland		
14	Italy		
15	Latvia	Consumer Complaints handling of the Consumer Rights Protection Centre	General – public ADR
16	Lithuania	National Consumer Rights Protection Board	
17	Luxembourg	Commission Luxembourgeoise des Litiges de Voyages	Sector specific – private ADR
18	Malta		
19	Netherlands	Aviation Litigation Committee(organised under the Foundation for Consumer Complaints Board)	Sector specific – private ADR
20	Poland		
21	Portugal		
22	Romania	National Authority for Consumer Protection	Public ADR
23	Slovakia		
24	Slovenia		
25	Spain	National Consumer Arbitration Board and Regional Juntas Arbitrales de Consumo	General – public ADR

26	Sweden	National Board for Consumer Protection	General – public ADR
27	United Kingdom	Association of British Travel Agents ABTA ltd	Private ADR

No	MEMBER STATE	ADR BODY- MARITIME	COMMENTS
1	Austria		
2	Belgium	Commission des disputes de voyages	Sector specific – private ADR
3	Bulgaria	Arbitration Court at the Bulgarian Chamber of Commerce and Industry, Mediation Centre	General – private ADR
4	Cyprus		
5	Czech Republic		
6	Denmark	Travel Industry Complaints Board	Sector specific – private ADR
7	Estonia	The Consumer Complaints Committee (CCC)	General – public ADR
8	Finland	The Consumer Complaints Board	General – public ADR
9	France		
10	Germany	Schlichtungsstelle Mobilitaet (The Conciliation Body for Long-Distance Travel)	Sector specific – public ADR
11	Greece	The Hellenic Consumers' Ombudsman (Sinigoros tou Katanaloti)	General – public ADR

12	Hungary	Arbitration Boards	General – public ADR
13	Ireland		
14	Italy		
15	Latvia	Consumer Complaints handling of the Consumer Rights Protection Centre (PTAC)	General – public ADR
16	Lithuania	National Consumer Rights Protection Board	
17	Luxembourg	Commission Luxembourgeoise des Litiges de Voyages	Sector specific – private ADR
18	Malta		
19	Netherlands		
20	Poland		
21	Portugal		
22	Romania	National Authority for Consumer Protection	Public ADR
23	Slovakia		
24	Slovenia		
25	Spain	National Consumer Arbitration Board and Regional Juntas Arbitrales de Consumo	General – public ADR
26	Sweden	National Board for Consumer Protection	General – public ADR
27	United Kingdom	Association of British Travel agents ABTA ltd	Private ADR

No	MEMBER STATE	ADR BODY-URBAN TRANSPORT	COMMENTS
1	Austria		
2	Belgium	Service de médiation auprès de la Société des Transports Intercommunaux de Bruxelles (STIB)	Sector specific
3	Bulgaria	Arbitration Court at the Bulgarian Chamber of Commerce and Industry, Mediation Centre	General – private ADR
4	Cyprus		
5	Czech Republic		
6	Denmark	Complaint Board for Bus, Train and Metro	Sector specific – private ADR
7	Estonia	The Consumer Complaints Committee (CCC)	General – public ADR
8	Finland	The Consumer Complaints Board	General – public ADR
9	France	Le Médiateur de la RATP	
10	Germany	<ul style="list-style-type: none"> • Schlichtungsstelle Öffentlicher Personenverkehr - Arbitration Board for Public Passenger Transport • Schlichtungsstelle Nahverkehr des Landes Nordrhein-Westfalen Arbitration Board for Local Public Transport in North Rhine-Westphalia • Schlichtungsstelle Nahverkehr Ost (Schlichtungsstelle Nahverkehr Berlin/Brandenburg/Sachsen-Anhalt) - Arbitration Board for Local Public Transport East • Ombudsstelle Nahverkehr Bayern - Ombudspoint for Local Public Transport Bavaria Ombudsstelle Nahverkehr Baden-Württemberg - Ombudspoint for Local Public Transport Baden-Württemberg 	
11	Greece	The Hellenic Consumers' Ombudsman (Sinigoros tou Katanaloti)	General – public ADR

12	Hungary	Arbitration Boards	General – public ADR
13	Ireland		
14	Italy		
15	Latvia	Consumer Complaints handling of the Consumer Rights Protection Centre (PTAC)	General – public ADR
No	MEMBER STATE	ADR BODY-URBAN TRANSPORT	COMMENTS
16	Lithuania	National Consumer Rights Protection Board	
17	Luxembourg	Sector specific – private ADR	Sector specific – private ADR
18	Malta		
19	Netherlands	Public Transport Arbitration Board (organised under the Foundation for Consumer Complaints Board)	
20	Poland		
21	Portugal		
22	Romania	National Authority for Consumer Protection	Public ADR
23	Slovakia		
24	Slovenia		

25	Spain	National Consumer Arbitration Board and Regional Juntas Arbitrales de Consumo	General – public ADR
26	Sweden	National Board for Consumer Protection	General – public ADR
27	United Kingdom	Association of British Travel agents ABTA Ltd	Private ADR

No	MEMBER STATE	ADR BODY-RAILWAY	COMMENTS
1	Austria		
2	Belgium	<ul style="list-style-type: none"> • Rail Ombudsman Service-Service de médiation auprès de la SNCB • Commission des disputes de voyages 	Sector specific – public ADR Sector specific – Private ADR
3	Bulgaria	Arbitration Court at the Bulgarian Chamber of Commerce and Industry, Mediation Centre	General – private ADR
4	Cyprus		
5	Czech Republic		
6	Denmark	Travel Industry Complaints Board	Sector specific – private ADR
7	Estonia	The Consumer Complaints Committee (CCC)	General – public ADR
8	Finland	The Consumer Complaints Board	General – public ADR
9	France	Médiateur de la SNCF	Sector specific – public ADR
10	Germany	Schlichtungsstelle Mobilität (The Conciliation Body for Long-Distance Travel)	Sector specific – public ADR
11	Greece	The Hellenic Consumers' Ombudsman (Sinigoros tou Katanaloti)	General - public ADR

12	Hungary	Arbitration Boards	General – public ADR
13	Ireland		
14	Italy		
15	Latvia	Consumer Complaints handling of the Consumer Rights Protection Centre (PTAC)	General – public ADR
16	Lithuania	National Consumer Rights Protection Board	
17	Luxembourg	Commission Luxembourgeoise des Litiges de Voyages	Sector specific – private ADR
18	Malta		
19	Netherlands	Public Transport Arbitration Board (organised under the Foundation for Consumer Complaints Board)	
20	Poland		
21	Portugal		
22	Romania	National Authority for Consumer Protection	Public ADR
23	Slovakia		
24	Slovenia		
25	Spain	National Consumer Arbitration Board and Regional Juntas Arbitrales de Consumo	General – public ADR
26	Sweden	National Board for Consumer Protection	General – public ADR
27	United Kingdom	Association of British Travel agents ABTA ltd	Private ADR

No	MEMBER STATE	ADR BODY- TOURISM	COMMENTS
1	Austria		
2	Belgium	Commission des disputes de voyages	Sector specific – private ADR
3	Bulgaria	Arbitration Court at the Bulgarian Chamber of Commerce and Industry, Mediation Centre	General – private ADR
4	Cyprus		
5	Czech Republic		
6	Denmark	<ul style="list-style-type: none"> • Travel Industry Complaint Board • Complaint Board for Hotel, Restaurant and Tourism 	Sector specific – private ADR Private ADR
7	Estonia	The Consumer Complaints Committee (CCC)	General – public ADR
8	Finland	The Consumer Complaints Board	General – public ADR
9	France		
10	Germany	Reiseschiedsstelle	Sector specific – private ADR
11	Greece	The Hellenic Consumers' Ombudsman (Sinigoros tou Katanaloti)	General - public ADR
12	Hungary	Arbitration Boards	General – public ADR
13	Ireland	Arbitration scheme for tour operators	
14	Italy		
15	Latvia	Consumer Complaints handling of the Consumer Rights Protection Centre (PTAC)	General – public ADR
16	Lithuania	National Consumer Rights Protection Board	

17	Luxembourg	Commission Luxembourgeoise des Litiges de Voyages	Sector specific – private ADR
18	Malta		
19	Netherlands		
20	Poland		
21	Portugal		
22	Romania	National Authority for Consumer Protection	Public ADR
23	Slovakia		
24	Slovenia		
25	Spain	National Consumer Arbitration Board and Regional Juntas Arbitrales de Consumo	General – public ADR
26	Sweden	National Board for Consumer Protection	General – public ADR
27	United Kingdom	Association of British Travel agents ABTA ltd	Private ADR

TELECOMMUNICATIONS

No	MEMBER STATE	ADR BODY	COMMENTS
1	Austria	<ul style="list-style-type: none"> • Conciliation in the field of telecommunications (Schlichtung in Telekommunikationsangelegenheiten) • Internet Ombudsman – Austrian Institute for Applied Telecommunications (Osterreichisches Institut für angewandte Telekommunikation –OIAT) 	<p>Sector specific- public ADR</p> <p>General-private ADR</p>

2	Belgium	Ombudsman for telecommunication problems (Service de médiation pour les télécommunications)	Sector specific – public ADR
3	Bulgaria	Arbitration Court at the Bulgarian Chamber of Commerce and Industry, Mediation Centre	General – private ADR
4	Cyprus	The Commissioner of Electronic Communications and Post Offices	General
5	Czech Republic	Czech Telecommunication Office	General – public ADR
6	Denmark	Telecommunications Complaints Board	Private ADR
7	Estonia	Consumer Complaints Committee	General – public ADR
8	Finland	Consumer Complaints Board	General – public ADR
9	France	<ul style="list-style-type: none"> • Médiateur des Communications électroniques • Médiateur Du Net du Forum des droits sur l'internet 	Public ADR General
10	Germany	Bundesnetzagentur – Schlichtungsstelle Telekommunikation	Sector specific – public ADR
11	Greece	The Hellenic Consumers' Ombudsman (Sinigoros tou Katanaloti)	General – public ADR
12	Hungary	Arbitration Boards	General – public ADR
13	Ireland		
14	Italy	Conciliation body of Telecom Italia	Sector specific – private ADR
15	Latvia	Consumer Complaints handling of the Consumer Rights Protection Centre (PTAC)	General – public ADR
16	Lithuania	National Consumer rights protection Board	
17	Luxembourg		

18	Malta		
19	Netherlands	Telecommunications Disputes Committee (organised under the Foundation for Consumer Complaints Board)	Sector specific – private ADR
20	Poland	<ul style="list-style-type: none"> • President of the Office of Electronic Communication (mediation) • Permanent Consumer Court of Arbitration 	<p>General – public ADR</p> <p>General – public ADR</p>
21	Portugal	National Arbitration Centre	General – public ADR
22	Romania	National Authority for management and Regulation in Communications of Romania	Public ADR
23	Slovakia	Telecommunications office of the Slovak Republic (Teleoff)	Sector specific – public ADR
24	Slovenia		
25	Spain	National Consumer Arbitration Board and Regional Juntas Arbitrales de Consumo	General – public ADR
26	Sweden	National Board for Consumer Protection	General – public ADR
27	United Kingdom	<ul style="list-style-type: none"> • OTELO- Office of Telecommunications Ombudsman • Communications and Internet Services Adjudication Scheme (CISAS) 	Sector specific – Public ADR

FINANCIAL SERVICES

No	MEMBER STATE	ADR BODY	COMMENTS
1	Austria (FIN-NET MEMBER)	Joint Conciliation Board of the Austrian Banking (Austrian Banking Ombudsman)	Sector specific
2	Belgium (FIN-NET MEMBER)	<ul style="list-style-type: none"> • Insurance Ombudsman • Mediation Service Banks – Credit – Investments • Banking, Finance and Insurance Commission 	Sector specific Sector specific – private ADR General – public ADR
3	Bulgaria	Arbitration Court at the Bulgarian Chamber of Commerce and Industry, Mediation Centre	General – private ADR
4	Cyprus		
5	Czech Republic (FIN-NET MEMBER)	Financial Arbitrator of the Czech Republic	Public ADR
6	Denmark (FIN-NET MEMBER)	<ul style="list-style-type: none"> • Complaint Board of Danish Securities and Brokering Companies • Insurance Complaints Board • Danish Complaint Board of Investment Funds • Danish Complaint Board of Banking Services • Danish Mortgage Credit Complaint Board 	Private ADR Private ADR Private ADR Sector specific – private ADR Sector specific – private ADR
7	Estonia	Insurance Court of Arbitration	Sector specific

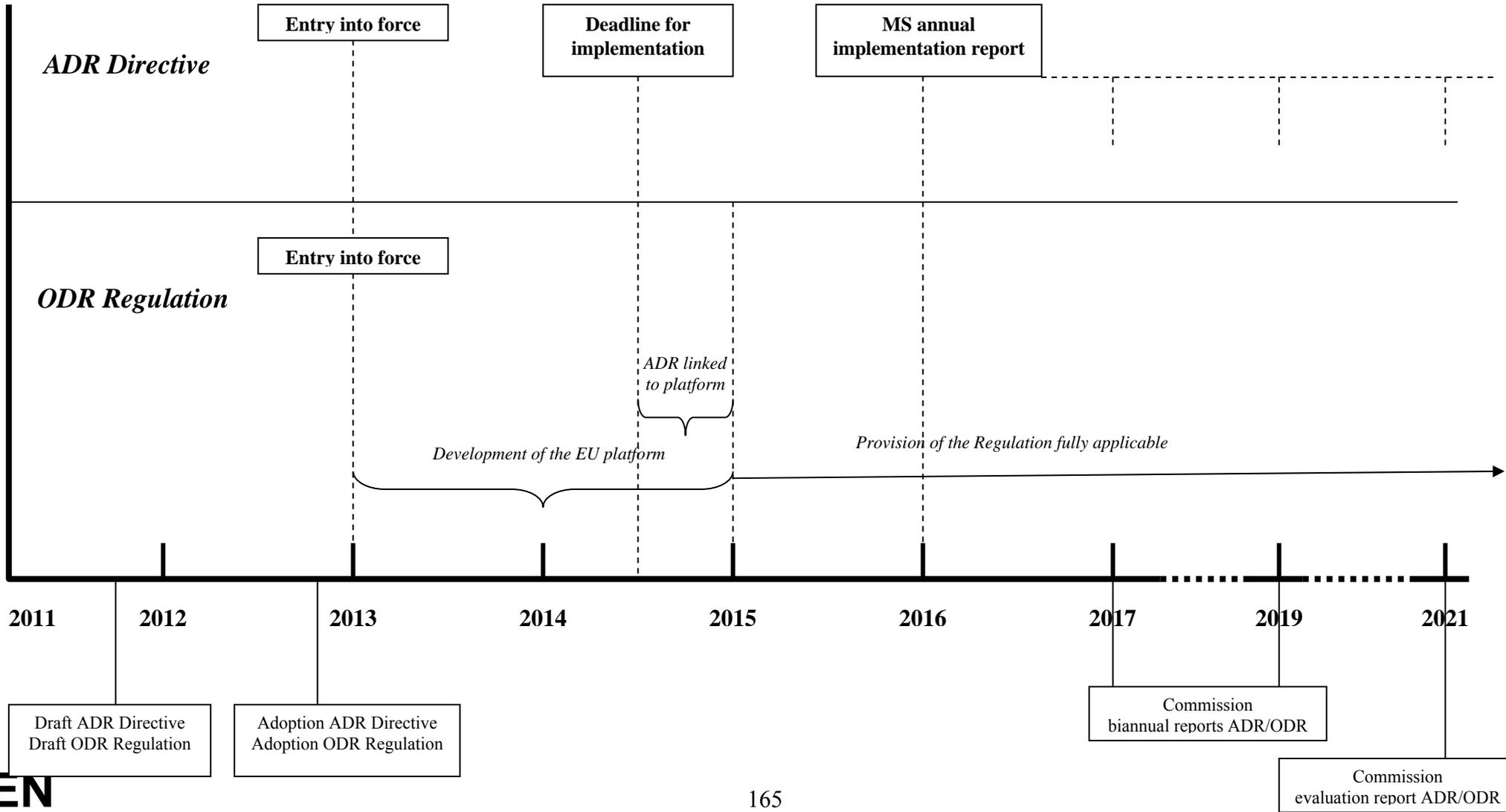
8	Finland (FIN-NET MEMBER)	<ul style="list-style-type: none"> • Finnish Financial Ombudsman Bureau (The Finnish Insurance, Securities and Banking Complaint Boards) • Consumer Complaints Board 	<p>General</p> <p>General – public ADR</p>
9	France (FIN-NET MEMBER)	<ul style="list-style-type: none"> • AMF Ombudsman (Médiateur de l'Autorité des Marchés Financiers) • Mediator of the French Association of Specialised Finance Companies (ASF) • Insurance Mediator 	<p>Public ADR</p> <p>Sector specific – private ADR</p>
10	Germany (FIN-NET MEMBER)	<ul style="list-style-type: none"> • German Savings Banks Association • Ombudsman of German Cooperative Banks • Ombudsman of German Public Sector Banks • Ombudsman Scheme of the Private Commercial Banks • Ombudsman Private Health and Long-term Care Insurance • Arbitration Board at the Deutsche Bundesbank • Arbitration Board of the Landesbausparkassen (LBS) • Association of Private Building Societies – Customer Complaints System • Insurance Ombudsman • Department of consumer and investor protection at the Federal Financial Supervisory Authority (BaFin) • Arbitration Board at the Baden Savings Banks and Giro Association • Arbitration Board at the Wurttemberg Savings Bank And Giro Association • Arbitration Board at the Bavarian Savings Bank Association • Arbitration Board at the Berlin Savings Bank Association • Arbitration Board at the East German Savings Bank and Giro Association • Complaints management at the Bremen Savings Bank • Complaints management at the Bremerhaven city Savings Bank • Customer complaints management at the Hamburg Savings Bank • Arbitration Board at the Hesse-Thuringia Savings Bank and Giro 	<p>Sector specific -</p> <p>Sector specific – private ADR</p> <p>Sector specific – private ADR</p> <p>Sector specific – private ADR</p> <p>Sector specific – public ADR</p> <p>sector specific – private only</p> <p>general – public ADR</p>

		<p>Association</p> <ul style="list-style-type: none"> • Arbitration Board at the Lower Saxony Savings Bank and Giro Association • Arbitration board at the Westphalia-Lippe Savings Bank and Giro <p>Association</p> <ul style="list-style-type: none"> • Arbitration Board at the Rhineland Palatinate savings banks • Arbitration Board at the Rhineland-Palatinate Savings Bank and Giro <p>Association</p> <ul style="list-style-type: none"> • Arbitration Board at the Saar Savings Bank and Giro Association • Arbitration Board at the Schleswig-Holstein Savings Bank and Giro <p>Association</p>	
11	Greece (FIN-NET MEMBER)	<ul style="list-style-type: none"> • Hellenic Ombudsman for Banking – Investment Services (H.O.B.I.S.) • Insurance Ombudsman 	General – private ADR
12	Hungary (FIN-NET MEMBER)	Arbitration Board of Budapest	General – public ADR
13	Ireland (FIN-NET MEMBER)	Financial Services Ombudsman's Bureau / Biúró an Ombudsman um Sheirbhísí Airgeadais	General – public ADR
14	Italy (FIN-NET MEMBER)	<ul style="list-style-type: none"> • ISVAP – Supervisory body for private insurance <p>Conciliatore Bancario Finanziario (Mediation scheme)</p> <ul style="list-style-type: none"> • Conciliatore Bancario Finanziario (Ombudsman scheme) 	<p>General – private ADR</p> <p>General – private ADR</p>
15	Latvia	<ul style="list-style-type: none"> • Ombudsman of the Association of Commercial Banks • Ombudsman of the Association of Latvian Insurers 	Sector specific – private ADR

			Sector specific – private ADR
16	Lithuania (FIN-NET MEMBER)	National Consumer rights protection Board	
17	Luxembourg (FIN-NET MEMBER)	<ul style="list-style-type: none"> • Commission de Surveillance du Secteur Financier (CSSF) • Médiateur en Assurances - Insurance Mediator 	General – public ADR Sector specific
18	Malta (FIN-NET MEMBER)	Consumer Complaints Manager of the Malta Financial Services Authority (MFSA)	General – public ADR
19	Netherlands (FIN-NET MEMBER)	Klachteninstituut Financiële Dienstverlening (Kifid) – Financial Services Complaints Institute	General
20	Poland (FIN-NET MEMBER)	<ul style="list-style-type: none"> • Banking Ombudsman • Insurance Ombudsman • Arbitration Court at the Polish Financial Supervision Authority 	General – private ADR General – public ADR General – public ADR
21	Portugal (FIN-NET MEMBER)	<ul style="list-style-type: none"> • CMVM – Portuguese Securities Market Commission • Lisbon Arbitration Centre for Consumer Conflicts 	Sector specific – public ADR General – public ADR
22	Romania	National Authority for Consumer Protection	Public ADR
23	Slovakia	Permanent Arbitration Court of the Association of Banks at the National Bank of Slovakia	General
24	Slovenia	<ul style="list-style-type: none"> • Insurance Ombudsman of the Slovenian Insurance Association • Mediation centre of the Slovenian Insurance Association • Arbitration Scheme for insurance claims at the Triglav Insurance Company • Mediation centre of the Bank Association of Slovenia 	Sector specific – private ADR Sector specific – private ADR

			Sector Specific – Private ADR Sector specific
25	Spain (FIN-NET MEMBER)	<ul style="list-style-type: none"> • Investor Assistance Office – Investors Division of the CNMV • Complaints Service of the Directorate-General of Insurance and Pension Funds (DGSFP) • Complaints Service of the Bank of Spain • Complaints service of the Spanish Securities Commission 	
26	Sweden (FIN-NET MEMBER)	National Board for Consumer Complaints	General – public ADR
27	United Kingdom (FIN-NET MEMBER)	<ul style="list-style-type: none"> • Financial Ombudsman Service • Consumer Credit Trade Association • Finance and Leasing Association • Financial Services Compensation Scheme 	General – public ADR

ANNEX XI: TIME-LINE FOR THE TRANSPOSITION OF THE PREFERRED OPTION



ANNEX XII: THE COST OF NON ADR- BENEFITS FOR BUSINESSES

1. Introduction

Given the broadness of the subject, the multiplicity of the issues covered, and in view of each Member state having its own context, traditions and practices, generalisations about ADR is not easy to make, nor it is possible to provide comprehensive country-to-country comparisons. An additional factor is that data collections are rather rudimentary in spite of combined research efforts.¹⁸⁶

A recent study carried out by Civic¹⁸⁷ shows that financial service (64%), telecommunications and postal services (22%), non-food consumer goods (6%), transport and package travel/tourism (5%), energy, water supply and heating (3%) are those sectors that account for more than 90% of ADR cases in Europe¹⁸⁸. Hence, the analysis will focus on these main sectors only¹⁸⁹. According to the data provided by Eurostat, the total number of EU businesses working in these sectors is approximately 3.8 million. For the assessment of administrative and compliance costs for EU businesses, the study assumes that the number of ADR cases would lie between the most recent number of ADR cases, 506.351 – 1.01 cases per 1.000 inhabitants- (current situation scenario) and 885.742¹⁹⁰ cases -1.77 ADR cases per 1.000 inhabitants (rapid growth scenario)¹⁹¹.

1.1 Administrative and compliance costs

The study provides a distinction between administrative¹⁹² and compliance¹⁹³ costs and estimates for one-off¹⁹⁴ and recurring costs¹⁹⁵, respectively. In addition, it gives an overview of the costs spent during the first year of activity and following years. It emerges that EU businesses would incur a total cost of €1.035 million during year 1 linked to information obligation and use of ADR¹⁹⁶ and a total cost of €136 to €238 million in year 2 and

¹⁸⁶ Cross-Border Alternative dispute resolution in the European Union p.13

¹⁸⁷ Assessment of the compliance costs, including administrative costs/burdens on businesses linked to use of alternative dispute resolution (ADR), 2011, Civic consulting of the consumer Policy evaluation Consortium (CPEC).

¹⁸⁸ Civic study on the assessment of compliance costs.

¹⁸⁹ The number of businesses belonging to each of these sectors are as follows as underlined by the Eurostat structural Business statistics, which provide information on the number of businesses according to the statistical classification of economic activities (NACE): financial services: 15.521; telecommunications and postal services 83.393; non-food consumer goods 2.366.904; transport and package travel/tourism 667.782; energy, water supply, heating 21.564.

¹⁹⁰ (64% of cases would occur in financial services, for a total number of 566.875 case, 22%in telecommunications and postal services for a total of 194863 cases, 6% for non-food for a total 53.145 case, transport and package travel/tourism for a total of 44.287 and 3% in the energy, water supply and heating for a total of 26.572 cases).

¹⁹¹ This estimation has been done extrapolating the number of ADR cases collected from 2002-2008 using a linear regression until 2013 (assuming a transition period of 2 years). However, it must be noted that the rate of increase will not follow a linear growth indefinitely but rather a maximum number at some point in time (see footnote 5).

¹⁹² Administrative costs on businesses are referred to be those costs that result from businesses' legal obligations to provide information in relation to ADR to consumers. This includes the costs related to the obligation of businesses to inform consumers about the existence of general or sector-specific ADR schemes in the Member states where they operate (for example, by including information regarding ADR in their commercial practices).

¹⁹³ Compliance costs to businesses are considered in this assessment to be those costs that result from their involvement in the ADR process. This includes, for example, costs to businesses resulting from handling a complaint submitted to an ADR scheme, from the moment the trader is aware that a consumer complaint will be taken to ADR.

¹⁹⁴ This kind of costs imply costs that are only sustained once in connection with the business adapting to the new information obligations resulting from the involvement of business in ADR procedures.

¹⁹⁵ Recurring actions are actions that must be conducted for each case received by the business from the ADR scheme. They imply recurring costs for businesses.

¹⁹⁶ Report on Assessment of the compliance costs including administrative costs/burdens on businesses linked to the use of ADR, 2011, Civic Consulting.

subsequent year. In year 1, this concretely means, on average, a one-off cost of € 254 per business. However, it should be noted that financial companies would not incur such a cost because during the two years transition commercial documents are expected to be updated in any case. In year 2 and subsequent years, the cost would be around €136-€238 million and this is lower because the information costs have already been incurred in Year 1. About a third of these costs (€48-€84 million per year) would be one-off costs incurred by businesses when involved in an ADR case for the first time. The other two thirds of the costs (€88 – €154 million) incurred in year 2 and subsequent years would relate to the recurring costs resulting from the involvement of businesses in ADR cases. The compliance cost depends on the sectors: the data collected indicates that in order to handle a complaint through the ADR/ODR system financial providers incur a compliance cost of €221 per case while businesses in other sectors of activity incur a cost of € 93. (See figure 6).

1.2 One-off costs related to information obligation on consumer ADR

As defined by the study, one-off costs are only sustained once by businesses. These costs are mainly divided in two main categories: actions related to the provision of information in relation to ADR to consumers and actions resulting from the involvement of businesses in ADR cases.

The total amount incurred would be to €845 – €881 million for the first year of application and information obligation, and as said before, €48-€84 million for the second year and subsequent years. The first year, the average costs incurred by businesses would therefore be around €726 while for the financial services this cost would be slightly higher and be around €854. On the contrary on the second year, it would be €472 while for the financial sector would be around €600¹⁹⁷ (figure 7).

2. The cost of non ADR

1st scenario: Court length procedure: 697 days/ Court average cost: € 25337

ADR length procedure: 90 days/ ADR average cost: € 854

Court + ADR: 787 days/ Costs: €26191

As already mentioned, the data available do not allow us to have an exact overview of the state of play of ADR in each member state. That is why in order to have an analysis which is closer to our current context, we assume two scenarios: one that is based on a recent survey published by the ADR Center on the Cost of Non-ADR – Surveying and showing the actual costs of Intra-community Commercial Litigation and the other one is an internal analysis made by the Commission services having in mind the first scenario as an extreme ratio. As we will see, in the second scenario, we maintain a very conservative estimation.

¹⁹⁷

It must be noted that, case handling fees and external legal costs are not considered in the estimates provided in the tables. The assessment of compliance and administrative costs for EU businesses is based on data provided by businesses on time estimates and levels of qualification needed for completing each recurring and one-off action.

2.1 ADR: benefits for businesses

According to a recent survey¹⁹⁸, over two-thirds of businesses reported spending a considerable amount of their budget to annual legal costs incurred as a result of cross-border disputes. More particularly, a third of the respondents (27%) indicated that they spent between €10.000 and €50.000 on legal fees in relation to cross-border legal cases. In addition, a further 18% spent even more than this to deal with these disputes. In addition to legal expenses, almost two thirds of the retailers claimed they incurred other significant costs (opportunity costs, cost of staff time, etc¹⁹⁹).

At the same time, the survey provides also a clear overview on the length and costs of a domestic dispute in the EU for a value of € 200.000: the length of a procedure varies accordingly to the Member State, and notably from 246 days (almost one year) in Germany to 2205 days (more than 6 years) in Italy. The average length to solve a dispute in the European Union is about two years (697 days).

Looking at the costs incurred by companies, the most expensive dispute resolution take place in Sweden (€ 65.710), followed by Ireland (€ 53.800), Slovakia (€ 51.993) and United Kingdom (€ 51.536). The less expensive are found in Cyprus (€6.796), Latvia (€ 6900), Slovenia (€ 8087) and Malta (€8100). On average, on a yearly basis, a domestic litigation dispute costs about € 25.337²⁰⁰.

According to a study delivered by Civic²⁰¹, when ADR is successful, disputes are resolved in 90 days. Furthermore, taking a very conservative range of data, the costs are reduced to €854²⁰².

To evaluate the impact of the ADR/ODR system, we first use a one-step approach as the basis of comparison. A one-step approach is when disputants proceed directly to the courts to solve a dispute. This approach is one-step in the sense that it does not use any ADR scheme to

¹⁹⁸ The Cost of Non-ADR – Surveying and showing the actual costs of Intra-community Commercial Litigation. Funded by the European Union (EC – funded "specific programme Civil Justice 2007-2013), implemented by a consortium led by ADR Center, in collaboration with the European Company Lawyers Association (ECLA) and the European association of Craft, Small and Medium sized Enterprises (UEAPME). This study was also used to quantify the cost of not using mediation by the European Parliament (Directorate General for internal policies, Policy department citizens' rights and constitutional affairs and on a study issued by the European Parliament, 2011, available at: http://www.europarl.europa.eu/meetdocs/2009_2014/documents/imco/dv/adr_study/_adr_study_en.pdf It was also used by the policy department on Economic and scientific policy of the European parliament on "Cross-border Alternative dispute resolution in the European Union", 2011, available at: <http://www.europarl.europa.eu/document/activities/cont/201105/20110518ATT19592/20110518ATT19592EN.pdf>. It was also mentioned by DG Just in cooperation with the CESS (Center for Strategy and evaluation services) to assess the study for an impact assessment on a draft legislative proposal on the attachment of bank accounts: http://ec.europa.eu/justice/civil/files/bank_attachments_en.pdf

¹⁹⁹ They are not included in our analysis.

²⁰⁰ The survey does not provide a detailed, country-by country breakdown of how the estimates for time and costs were calculated but does give an example based on Austria. For this country, for instance, the time estimates were filing and service (30), court proceedings (300) and enforcement (210). In the case of costs, these are estimated as follows: €10,400 (legal fees), €3,780 (court fees) and €480 (enforcement). For a total of 14.660 €.

²⁰¹ Report on Assessment of the compliance costs including administrative costs/burdens on businesses linked to the use of ADR, 2011, Civic Consulting.

²⁰² This is a conservative data: € 854 refers to the total costs incurred in year one.

resolve the dispute before going to court. In our case, we assume that disputants recur first to ADR (step one), and only if the ADR fails, the disputants proceed to court (step two)²⁰³.

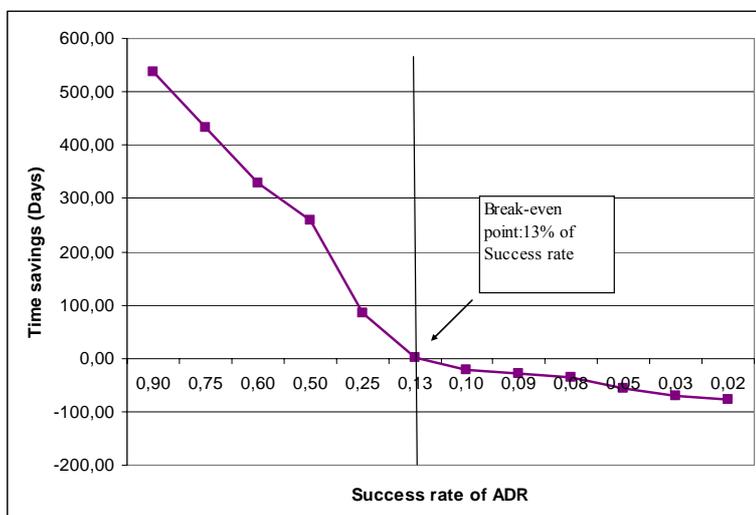
Using a baseline of 100 disputes, if we consider a 60% success rate of ADR (i.e. 60 disputes are settled within 90 days), and the other 40% of the disputes ADR failed and the disputes then proceed to court (i.e. 40 disputes are settled in 787 days through ADR and then court): per dispute, we estimate a weighted average of 369 days to resolve the disputes and €10.989 to pay for the disputes using the two-step approach in EU.²⁰⁴ In terms of savings, this means € 14.349.

Even with a success rate at 50% savings in terms of cost and time are strongly in favour of using the ADR/ODR system. In EU, if ADR was used and successful 50% of the time, each dispute was resolved in 439 days, with a time saving of 258 days while the costs were reduced by €11.814.

2.2 What is the percentage success rate at which ADR is not a financially viable or a time-saving option?

Applying the calculation described above, and using a progressively lower success rate of ADR to find the break-even point, the data shows that it is not necessary to achieve even a marginally average percentage of compliance for ADR to save time. For the EU, the lowest break-even point is at 13%. This could be also considered as the point at which using an ADR does not create any time advantage. (Figure 1). This concretely means that the ADR in the EU must fail 97% of the time in order to no create any time savings for businesses.

Figure 1- Time savings in EU- the break-even point



²⁰³

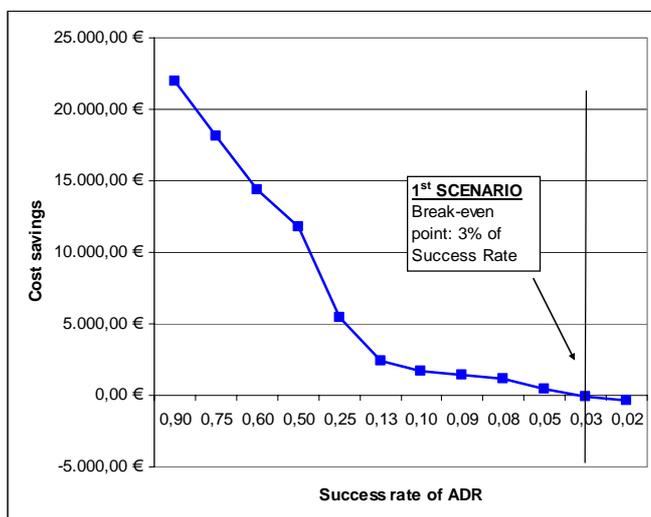
The number of days saved using the two-step approach, are calculated as a weighted average of the estimated duration of the ADR process and the duration of court cases in the disputes where ADR has failed. To calculate the weighted average time it takes for EU Member States to resolve a dispute using the two-step approach with a certain estimated ADR success rate, the formula is the length of time (in days) it takes to use ADR multiplied by the percentage ADR success rate plus the length of time it takes to use ADR and then proceed to court multiplied by the percentage ADR failure rate. To calculate the weighted average expenses it costs for EU Member States to resolve a dispute using a certain estimated ADR success rate, the formula is the cost (in Euros) to use ADR multiplied by the percentage ADR success rate plus the expense it costs to take to use ADR and then proceed to court multiplied by the percentage ADR failure rate.

²⁰⁴

The time average for ADR in EU at a 60% ADR success rate using the two-step approach is 369 days. Accordingly, there is a total time savings of 328 days. The average cost using the ADR/ODR system at 60% ADR success rate would be around €10.862.

Now, following the same reasoning, we can address the break-even point for cost savings. As figure 5 shows, for EU, a 3% ADR success rate is the break-even point in terms of costs, or the point at which using ADR does not create any financial advantage. This means that ADR in EU must fail 97% of the time in order to not create any value-added (cost-savings) for the EU businesses.

Figure 2 - Cost savings in EU – the break-even point (Referring to going to court paying €25337 on average)



2.3 Second scenario

Court: length of the procedure: 697 days, Costs of the procedure: 7000 Euro

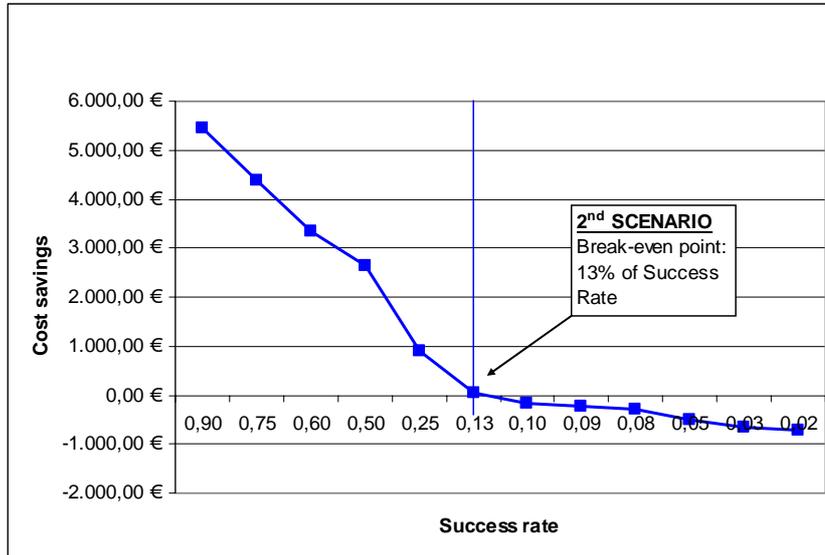
ADR: length of the procedure 90 days, costs of the procedure 854 Euro

ADR + Court: 787 days, costs 7854 Euro

Since we assume that the average length of the procedure remains the same, there is no change in the analysis related to the length of the procedure. That's means that with a 60% success rate (i.e. 60 disputes are settled within 90 days), the disputes will be solved in 369 days with a time saving of 328 days. If ADR was used and successful 50% of the time (i.e. 50 disputes are settled within 90 days), disputes were resolved in 439 days, with a time saving of 258 days (See figure 2).

On the contrary, if we assume that the average cost incurred by businesses when going to court is 7.000 Euro (more then three times less than what estimated by the Survey on the costs of non-ADR), the scenario still remains strongly in favour of the ADR/ODR system. In fact, for EU a 13% ADR success rate is the break-even point in terms of costs. This means that ADR must fail 87% of times to not create any added value for the EU businesses (See figure 3).

Figure 3 - Cost savings in EU – the break-even point

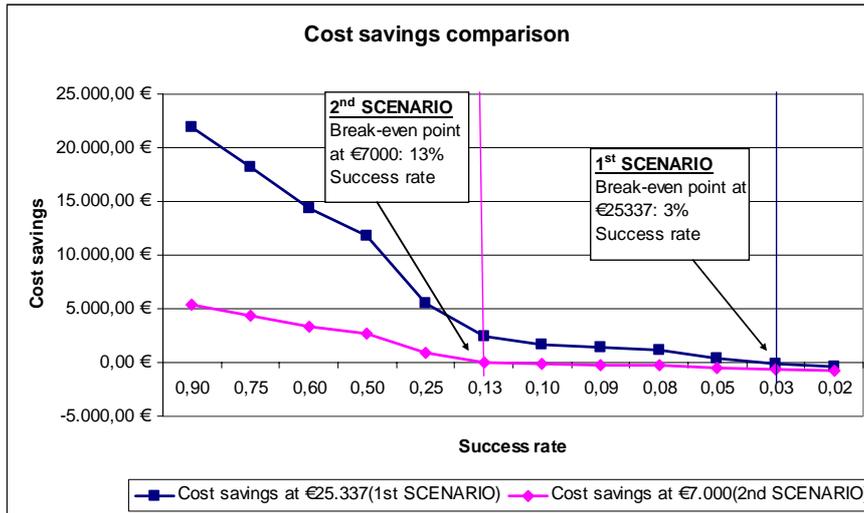


In terms of costs savings, with a success rate scenario of 60% the procedure would cost € 3654 with a total saving of € 3346 per business. This means that if we assume that the number of cases will go from 506.351 to 885.742 (see footnote 7), we can assume that businesses involved in ADR cases process two cases per year on average²⁰⁵. Consequently according to the cases provided, the number of companies that will deal with ADR cases would vary between 253.176 and 442871206. This means that the total savings per each EU business, should they deal only with two cases per year, would be in a range of € 1.7 billion to € 3.0 billion. This is again a very conservative estimation. If we compare the two scenarios (see figure 4), we were able to compare the estimate cost savings (at different success rates) for different costs of ADR and court litigation.

Figure 4- Cost savings comparison between the two different scenarios

²⁰⁵ According to a recent European Business Test Panel (EBTP), among businesses that reported to have already used ADR, 33% have used it more than 10 times, and 48% up to 4. Similarly, a passenger railway company and several energy providers reported to have been involved in more than 2000 ADR cases each in 2010.

²⁰⁶ Civic Consulting study on the compliance costs annex II.



As we can see, the success rate break-even point at € 7000, even if higher compared to the first scenario success rate break even point, is still a low one (13%). Indeed, assuming a € 7000 of court litigation cost the ADR in EU must fail 87% of the time to not create any value added (cost-savings) for the EU businesses.

3 Conclusions

The total savings that EU businesses could gain if a universal and well-known ADR system would be in place may vary, on a yearly basis, from a minimum of €1.7 billion (EU commission services conservative scenario) to a maximum of € 7.3 billion (1st scenario) dealing with 506.351 cases. Should on the contrary the cases be around 885.742, the savings are more generous going from a minimum of € 3 billion (EU commission services conservative scenario) to about € 13 billion (1st scenario). (See figure 5).

Figure 5 - Total savings for EU businesses

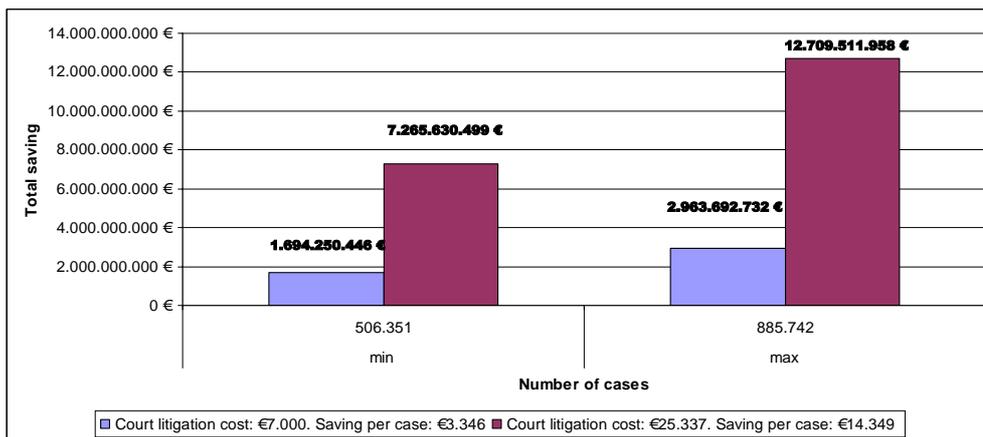


Figure 6 - Total administrative and compliance costs for EU businesses in Year 1

Obligation	Required action	Frequency of action (per year)	Estimated cost of action for all EU businesses ^a (in Euro)	Average cost per Business ²⁰⁷
<i>Information obligations of businesses</i>				
<i>Obligation to provide information in relation to ADR to consumers</i>	1. Familiarisation with the information obligations	One-off	198,358,180	€ 63
	2. Defining information regarding ADR to be presented to consumers	One-off	99,179,090	€ 32
	3. Preparing summary documentation to distribute information to employees dealing with consumer complaints	One-off	223,152,953	€ 71
	4. Adding information on ADR in contracts, invoices, receipts, websites, brochures/leaflets	One-off	276,043,909	€ 88
	5. Reproducing changed (templates of) contracts, invoices, receipts, brochures/leaflets	One-off	Not significant ^b	-
Total one-off costs incurred by all EU business as a result of the obligation to inform consumers on ADR			796,734,132	€ 254
Obligations of businesses resulting from involvement in ADR process				
<i>General cooperation with ADR scheme(s)</i>	1. Familiarisation with the obligation to cooperate with the ADR scheme	On e-off	31,990,599 to 55,959,920	€ 253
	2. Providing information to relevant employees concerning the ADR procedure	One-off	15,995,300 to 27,979,960	€ 126
				€ 379
Total one-off costs incurred by EU businesses involved for the first time in an ADR case in Year 1:			47,985,899 to 83,939,880	
<i>Handling a complaint submitted by a consumer to an ADR scheme</i>	1. Processing a complaint submitted to the ADR scheme and retrieving information regarding complaint from existing data ^(c)	Recurring	15,865,927 to 27,753,687	€ 11 ^(d) (Fin. Serv: € 43)
	2. Reviewing the statement of the ADR scheme	Recurring	20,790,889 to 36,368,749	€ 38 ^(d) (Fin. serv: € 43)

²⁰⁷

This includes also the staff time spent in action according to the average labour costs per hour in the EU: Civic Consulting study on the compliance costs, page 15.

	3. Providing a statement to the ADR scheme regarding the complaint and/or proposing settlement to consumer	Recurring	29,268,393 to 51,198,131	€ 22 ^(d) (Fin serv: € 78)
	4. Reviewing and filing the outcome of the ADR procedure (or results of settlement with consumer, if applicable)	Recurring	22,378,853 to 39,146,513	€ 22 ^(d) (Fin. serv:€ 57)
				€93 ^(d) (Fin. Ser: € 221)
Total recurring costs resulting from involvement of EU businesses in ADR cases in Year 1:			88,304,062 to 154,467,080	
Total administrative and compliance costs incurred by all EU businesses in year 1:			933,024,093 to 1,035,141,092	
			Total	€ 726 ^(d) (Financial services:€854)

Source: Civic Consulting. Notes: (a) Relevant businesses include businesses in the sectors of financial services, telecommunications and postal services; energy, water supply, and heating; transport and package travel/tourism; and non-food consumer goods. The range provided refers to the difference between the 'current situation' and the 'rapid growth' scenarios. (b) Under the assumption of a transition period of two years for the implementation of the information obligation by businesses. (c) For example, contacting relevant departments (such as the customer service centre), retrieving the contract, identifying the complainant, etc. (d) Average cost per business (not including financial services sector).

Figure 7 -Total administrative and compliance costs for EU businesses in Year 2 and each following year

Obligation	Required action	Frequency of action (per year)	Estimated cost of action for all EU businesses (a) (in Euro)	Average cost per business ²⁰⁸
Obligations of businesses resulting from involvement in ADR process				
<i>General cooperation with ADR scheme(s)</i>	1.Familiarisation with the obligation to cooperate with the ADR scheme	One-off	31,990,599 to 55,959,920	€253
	2.Providing information to relevant employees concerning the ADR procedure	One-off	15,995,300 to 27,979,960	€126
	Total one-off costs incurred by EU businesses involved for the first time		47,985,899 to 83,939,880	€379

²⁰⁸

This includes also the staff time spent in action according to the average labour costs per hour in the EU: Civic Consulting study on the compliance costs, page 15

	<i>in an ADR case in Year 2 and following:</i>			
<i>Handling a complaint submitted by a consumer to an ADR scheme</i>	1. Processing a complaint submitted to the ADR scheme, to which the business must provide a statement, and retrieving information regarding complaint from existing data ^(b)	Recurring	15,865,927 to 27,753,687	€ 11 ^(c) (Financial services: € 43)
	2. Reviewing the statement of the ADR scheme	Recurring	20,790,889 to 36,368,749	€ 38 ^(c) (Financial services: € 43)
	3. Providing a statement to the ADR scheme regarding the complaint and/or proposing settlement to consumer	Recurring	29,268,393 to 51,198,131	€ 22 ^(c) (Financial services: € 78)
	4. Reviewing and filing the outcome of the ADR procedure (or results of settlement with consumer, if applicable)	Recurring	22,378,853 to 39,146,513	€ 22 ^(c) (Financial services: € 57)
	<i>Total one-off costs incurred by EU businesses involved for the first time in an ADR case in Year 2 and following:</i>		<i>88,304,062 to 154,467,080</i>	€93 ^(c) (Financial services: € 221)
	<i>Total one-off costs incurred by EU businesses involved for the first time in an ADR case in Year 2 and following:</i>		<i>136,289,961 to 238,406,960</i>	
			Total	€472 ^(c) (Financial services: € 600)

Source: Civic Consulting. Notes: (a) Relevant businesses include businesses in the sectors of financial services, telecommunications and postal services; energy, water supply, and heating; transport and package travel/tourism; and non-food consumer goods. The range provided refers to the difference between the 'current situation' and the 'rapid growth' scenarios. (b) For example, contacting relevant departments, such as the customer service centre, retrieving the contract, identifying the complainant, etc. (c) Average cost per business (not including financial services sector).