

**Ref:** European Commission Consultation on resolving consumer disputes out-of-court

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**Link:** [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13417-Resolving-consumer-disputes-out-of-court-report\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13417-Resolving-consumer-disputes-out-of-court-report_en)

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## EXECUTIVE SUMMARY

*(for BETTER FINANCE readers' benefit, not in the reply to the public consultation below)*

### What is Alternative/Online Dispute Resolution (ADR/ODR)?

Non-judicial procedures through which consumers (for our constituency, "retail" financial services users) can solve disputes with professionals and obtain redress for their rights. These are generally referred to as alternative dispute resolution (ADR) or out-of-court settlement of consumer claims.

Cases are (or should be) handled by independent and impartial entities (ADR bodies), established by law, through a procedure that is meant to be simple, fast, and cost-efficient for consumers.

In financial services, all professionals (including firms) must adhere to an ADR body/scheme.

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### Complaint-handling mechanisms (preliminary procedure)

Sectoral financial services regulation requires providers of services and products to establish complaint-handling mechanisms, which in most cases are a prerequisite (preliminary procedure) for accessing ADR mechanisms.

BETTER FINANCE's research and member input concludes that there is a need to **limit the response deadline for complaint-handling procedures at provider level to an overall maximum of 35 days: this would ensure swift and efficient replies.**

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### Raising consumer awareness

As highlighted by the EU Commission, the uptake of ADR mechanisms to solve claims between consumers and traders is fairly low, to which we add that financial services do not make an exception.

One reason is the general unawareness of consumers of this dispute resolution tools. The situation can be improved by informing consumers on a wide range of channels about this possibility, particularly of its potential advantages, such as:

- Awareness raising campaigns, as proposed by the EU Commission, such as national/EU-wide ADR-focused campaigns (social media, TV/radio, newspaper, Consumer Rights Campaign, etc);
  - through platforms that are frequently searched for by consumers in need (e.g. European ODR platform, Your Europe, etc);
  - by imposing disclosure of ADR information on traders' websites, platforms, marketplaces; and finally,
  - by publishing information on consumer or trade associations' platforms.
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### Independence of ADR bodies

BETTER FINANCE's research and analysis points to the fact that, in many jurisdictions, the members of ADR bodies (those who handle case) are not entirely independent from the financial industry. Thus, we propose that **EU law requires a minimum 5-year cooling off period for ADR members and restricts financing from the financial industry.**

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### Fragmentation of ADR bodies

The ADR landscape in the EU is very diverse and in some jurisdictions ADR bodies are set up at entity level, particularly in the banking industry. This raises questions as to the independence and effectiveness of ADR bodies, reason for which we propose to **reduce the fragmentation of ADR bodies, in particular in the banking industry.**

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### ADR decision compliance

To prove useful for consumers, ADR procedures must be efficient in leading to a swift resolution of the dispute with the trader and not overburden the consumer's journey. To achieve the latter, **EU law should make ADR decisions (for cases under a certain threshold) binding for financial services providers.**

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**About BETTER FINANCE**

*BETTER FINANCE, the European Federation of Investors and Financial Services Users, is the public interest non-governmental organisation advocating and defending the interests of European citizens as financial services users at the European level to lawmakers and the public in order to promote research, information and training on investments, savings and personal finances. It is the one and only European-level organisation solely dedicated to the representation of individual investors, savers and other financial services users.*

*BETTER FINANCE acts as an independent financial expertise and advocacy centre to the direct benefit of European financial services users. Since the BETTER FINANCE constituency includes individual and small shareholders, fund and retail investors, savers, pension fund participants, life insurance policy holders, borrowers, and other stakeholders who are independent from the financial industry, it has the best interests of all European citizens at heart. As such its activities are supported by the European Union since 2012.*

## INTRODUCTORY EXPLANATIONS (for non-professional readers)



In 2022, BETTER FINANCE researched the tools available for individual, non-professional (“retail”) investors to obtain redress for breaches of their rights in financial services.

Complementing the analysis on collective redress, the report focused on the recourses an individual can undertake on his/her own to solve disputes with financial services or product providers.

The report, *Individual Redress Tools for Retail Investors*, analyses complaint-handling procedures, alternative dispute resolution (ADR), complaints to financial ombudsmen / mediators, and court proceedings, with a focus on the most common mechanism for out-of-court settlement, ADR.

Alternative Dispute Resolution (ADR) mechanisms denominate non-judicial procedures through which consumers (including “retail” financial services providers, such as investors or insurance policy holders) can solve disputes with professionals and obtain redress for their rights.

ADR mirrors the institutional and rule-based procedure before judicial courts but offers the advantages of being significantly simplified (less formalities) to offer an easy to understand, fast, and cost-efficient alternative of obtaining an impartial resolution on a dispute with services or product providers.

Generally, ADR is organised within an entity/institution designated as such (ADR body) and comprises (or should comprise) a panel of independent and impartial members that analyse the consumer’s claim and arguments, the response of the professional, and then state their resolution to the dispute. This decision can be binding or not (depending on the rules) to the parties.

Such procedures are generally referred to as alternative dispute resolution (ADR) or out-of-court settlement of consumer claims. In financial services, all professionals (including firms) must adhere to an ADR body/scheme, but most procedures require the consumer to attempt to settle the claim directly with the financial services provider before submitting the claim to the ADR body.

This is generally done through the complaint-handling mechanism to which all financial services providers are held to organise and maintain within their organisational structure.

The EU Commission is reviewing the ADR legislation stemming from EU law and seeks input from consumers and other stakeholders on what can be done to improve them and, most importantly, their uptake. This is due to the fact that the EU Commission analysed the functioning and implementation of ADR mechanisms in the EU in 2019 (6 years after the adoption of the ADR Directive) and found that these mechanisms are generally “underused.”

The ADR legislation comprises two dimensions:

- generally, the ADR Directive (Directive 2013/11/EU of the European Parliament and the Council of 21 May 2013 on alternative dispute resolution for consumers);
- sectoral legislation, as is the case for financial services (MiFID II, IDD, etc).

## Questionnaire

### Question 1. Throughout 2021, as a consumer how often have you bought a good or service online?

- ☐ Never
- ☐ Less than five times
- ☐ Between 5 and 10 times
- ☒ More than 10 times
- ☐ Not applicable

If other, please specify:

We wish to stress that BETTER FINANCE responds on behalf of our member organisations' constituents as individual, non-professional ("retail") financial services users (investors, pension savers, insurance policy holders, bank clients) and our views concern only the "retail" financial services and products.

### Question 2. Throughout 2021, as a trader, what share of your turnover did you do online?

Not applicable to BETTER FINANCE

### Question 3. Throughout 2021, as a consumer or as a trader, did you have to deal with a consumer dispute, i.e. a complaint that you had to escalate by referring to a third party?

- ☒ Yes, and I reverted to a lawyer
- ☒ Yes, and I reverted to an out-of-court option (i.e. a neutral third party e.g. arbitration, ombudsman, mediator, etc)
- ☐ No, we managed to find a solution bilaterally
- ☒ No, we simply dropped the case
- ☐ Other (please specify below)
- ☐ Not applicable

If other, please specify:

The constituents of BETTER FINANCE's member organisations have made recourse to different methods, but on many instances they have dropped the case due to the lack of understanding, cost, or burdensome preliminary procedures for ADR.

**Question 4. Are you aware of the following options that a consumer has to resolve a dispute?**

	Aware but not interested to use this option	Aware and used this option and likely to use again if needed in the future	Aware and used this option but will not consider using it again	Not aware
European Consumer Centre	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Alternative Dispute Resolution (out-of-court e.g. mediation, arbitration)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Lawyer	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consumer association	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Claims company	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Court	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Collective action	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
National enforcement authority	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
European Online Dispute Resolution platform	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Other (please specify)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**If other, please specify:**

To adequately reflect our constituents' experience, we explain below multiple choices:

- in general, "retail" investors are unaware of the existence of out-of-court dispute settlement and of the surrounding ecosystem (ECC, Fin-NET, ombudsman's office etc)'
- in exceptional cases, some investors have sought professional help (either from lawyers or consumer protection authorities) or saw on the complaints-handling section of the providers' websites and have become aware of alternative dispute resolution (ADR) bodies or mechanisms;
- using the professional services of lawyers or attorneys is the most known recourse for consumers, albeit infrequently (in some cases, not at all) used due to the perceived or actual costs that may be involved, particularly in low-value claims;
- in many countries there are still no provisions allowing collective actions, thus a significant part of EU residents could not be aware of have used this action;
- consumers are generally demotivated to go to court, especially if the value of the claim does not exceed a certain threshold.

**Question 5. What are the best channels to learn more about ADR systems? (max. 3 choices)**

- ☒ National/EU-wide ADR-focused campaign (social media, TV/radio, newspaper, Consumer Rights Campaign, etc)
- ☒ Via an EU website (European ODR platform, Your Europe, etc)
- ☒ Other sources of information e.g. ADR reports, statistics, articles on ADR
- ☒ ADR information on traders' websites, platforms, marketplaces
- ☒ Consumer or trader associations information system
- ☐ ADR information for traders by trade associations
- ☐ Other (please specify below)

**If other, please specify:**

Click or tap here to enter text.

**Question 6. Which are the top challenges which make the use of ADR by consumers and traders difficult in your country? (max. 5 choices)**

- ☒ Traders not adhering to an ADR scheme
- ☐ Difficulties to understand the process
- ☐ Time-consuming process
- ☒ Traders/consumers do not easily agree to participate
- ☒ Too many traders/consumers do not respect the ADR outcome
- ☒ Competence issues of ADR entities in my country
- ☒ Lack of independence of ADR entities in my country
- ☐ Consumer fees to start an ADR process are still too high in my country
- ☐ Traders fees are too high in my country
- ☐ Court systems are more trustworthy
- ☒ The system is not adapted to cross-border disputes
- ☒ Traders based in non EU countries are not covered by the ADR directive
- ☒ Not enough public investment in financial and human resources of ADR entities
- ☒ Traders and consumers are not sufficiently aware about ADR as a redress mechanism
- ☐ Other (please specify below)

**If other, please specify:**

Click or tap here to enter text.

**Question 7. Among the sentences below, which are the most relevant to promote the use of ADR systems? (max. 3 choices)**

- ☒ Trade associations could include compulsory participation to ADR in codes of conduct for their industry
- ☐ Public subsidisation of ADR bodies will make it more affordable for traders
- ☒ Participation of businesses in ADR processes are important elements of trustmarks
- ☒ Consumer associations could name traders which refuse to participate in ADR
- ☒ There should be interoperability between traders complaints systems and ADR bodies case-handling systems
- ☐ Other (please specify below)

**Please explain your answer to question 7:**

The most efficient way to promote the use of ADR systems is to make mandatory (by law) the adherence to ADR bodies and participation in ADR procedures for claims below a certain value. At the same time, preliminary procedures should be eliminated or to impose a maximum 35 days deadline for answering the consumer in complaint-handling procedures. However, as highlighted in Question 5 above, the issue is also of raising awareness for consumer of the existence and benefits of ADR procedures.

**Question 8. In your view, what is most important for a consumer when choosing an ADR process to resolve a dispute? (max. 3 choices)**

- ☒ Having supporting tools when filing ADR claims/looking for an ADR
- ☒ Having special support to file a claim, if the consumer is vulnerable
- ☒ Guidance on how to deal with issues when the trader is established in another country (e.g. in relation to travel services or an online purchase)
- ☒ Consumer associations proposing collective ADR procedures (grouping of procedures regarding the same trader and issues) for similar issues
- ☒ Knowing that ADR procedures are mandatory for traders
- ☐ Other (please specify below)

**If other, please specify:**

Click or tap here to enter text.

**Question 9. Many ADR entities have already started using digital tools, or introduced them during the pandemic. To what extent do you agree with the following statements?**

	Agree	Neutral	Disagree	Don't know
The current ADR process in my country is digitalised and easy to use	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Not everybody can use digital tools	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
It is unclear who runs online dispute resolution systems and what is their value	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Online traders have their own online systems and they function well	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Online traders system are efficient	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Question 10. Artificial intelligence (AI) assisted systems for consumer disputes are increasingly used. Would you feel confident using them? (max. 3 choices)**

- ☐ Yes but I want to know this in advance
- ☐ Yes but I want to be sure that I can appeal
- ☒ Yes but I think a human being should make the final decision
- ☒ No I do not trust AI in general
- ☐ No because the process is too difficult to understand and if there is a disagreement it will be impossible to understand where it comes from
- ☒ Other (please specify below)

**If other, please specify:**

Views are divided between consumers of retail financial services. The new, younger generation of investors are more tech-savvy and, thus, are prone for using AI-based applications to solve disputes, reason for which AI-assisted systems may seem more appealing to them, provided that they (consumers) are informed in advance and can appeal.

For the majority of investors, while AI can seem attractive as it may transform the procedures (simplify, save time), there will always be a need that appeals or final decisions are taken by other “humans” as they do not fully trust AI.

A smaller share of “retail” financial services users do not trust AI and prefer to have ADR/ODR procedures fully dealt by “humans”.



Question 11. Besides action taken by individual consumers to resolve their disputes and collective action by consumer representatives, which actions do you think are the most important for public authorities in your country to take to ensure that traders respect consumers' rights?

- ☐ There is no need for public authorities to take more action as traders in my country usually comply well with consumer law
- ☒ Public authorities periodically inspect shops both online and offline
- ☐ Public authorities rapidly stop and prevent traders from infringing the law
- ☐ Public authorities issue guidance to traders to help them better comply with consumer law
- ☒ Public authorities raise consumer and trader awareness
- ☒ Public authorities obtain remedies for the benefit of consumers
- ☒ Public authorities ensure that consumers receive effective compensation where their rights are infringed
- ☒ Public authorities in my country are under resourced and cannot do enough
- ☐ Other (please specify)
- ☐ I don't know

If other, please specify:

Click or tap here to enter text.

Question 12. Do you consider the actions taken by the public authorities in your country effective enough to ensure that consumer law is well respected?

- ☐ Yes
- ☒ No
- ☐ I don't know

Question 13. Where a trader is not located in the same country as the consumer, it is more difficult for public authorities to make that trader comply. This is why it is important for consumer protection authorities in the EU to cooperate across borders. What do you think should be the main objective of such cooperation to make traders comply with the law? (max. 3 choices)

- ☐ Jointly investigate a dishonest trader operating cross border, for instance by requesting relevant data, follow financial or data flows, carry out on-site inspections, mystery shopping, etc
- ☒ Where confirmed, request the trader to stop the infringement
- ☒ Force the trader to comply with the law, for example by imposing periodic penalty payments
- ☒ Fine the trader
- ☐ Seek to obtain commitments from the trader to offer remedies
- ☒ Require the trader to offer remedies to consumers, and impose sanctions if the trader does not comply
- ☒ Blacklist the trader on a publicly available website
- ☐ Ensure that warning messages to consumers are displayed on the trader's website
- ☐ Where necessary, block the website of a trader
- ☐ Other (please specify below)

If other, please specify:

Click or tap here to enter text.



**Question 14. Do you think that consumer authorities in your country are well-equipped to protect consumers against illegal practices committed by traders that are established outside of the EU?**

- ☐ Yes
- ☒ No, the illegal practices from non-EU companies are outside of the activity of authorities in my country
- ☒ No, the authorities can issue fines on foreign companies but there is no system to make them comply, or it is long and complex
- ☐ No, but this is a Single Market level problem
- ☐ I don't know