

Introductory remark on the EC consultation on improving compliance with consumer rights across the EU

24/06/2022

The Council of Bars and Law Societies of Europe (CCBE) represents the bars and law societies of 46 countries, and through them more than 1 million European lawyers.

The CCBE is grateful to participate in the European Commission consultation on *Improving compliance with consumer rights across the EU*. However, before answering and commenting on the individual questions, the CCBE would like to make a preliminary remark. In the introduction of the consultation, the following is stated:

*“On the other hand, consumers and their representative organizations must have sufficient knowledge of consumer rights to take the necessary steps to compel dishonest traders to respect those rights. **In this respect, alternative dispute resolution (ADR) is an appropriate out-of-court mechanism for low-value disputes, which account for the vast majority of consumer disputes.** The EU legal framework spelt out in the ADR Directive 2013/11 requires Member States to put in place fair, accessible and affordable ADR systems covering all consumer markets.”*

However, we are not sure that there is sufficient empirical evidence that Alternative Dispute Resolution (ADR) is a suitable procedure for low-value disputes across the EU to actually enforce consumer rights effectively.

Experience shows that, in principle, only economic pressure is capable of bringing about a change in the behaviour of commercial suppliers, be it pressure based on the assumption of reputational damage in the event of a refusal to accept justified warranty claims, or financial sanctions such as the obligation under, for example, the German legal system to reimburse out-of-court lawyers' fees and court costs in the event of successful enforcement of warranty claims. Considering that Art. 17-19 of the Brussels Ia Regulation allow the consumer to bring a dispute before the court of their habitual residence, and Art. 6 of the Rome I Regulation guarantees, despite a possible choice of law contained in the general terms and conditions of the supplier, that the consumer can argue on the basis of their home country law in case of doubt according to the favourability comparison provided for in Art. 6 (2), an EU-wide operating company exposes itself to considerable cost pressure if it fails to fulfil justified warranty claims. In addition, the enforcement of consumer rights such as, for example, air passenger rights, are easily amenable to scaling, especially by using IT or AI-based systems. The CCBE, therefore, believes that such instruments should, in any case, also be in focus and that ADR, all the more so on a voluntary basis, can only be an alternative to this, not a substitute. After all, the effective enforcement of consumer rights is the task of the Member States, which must grant citizens the right to effective access to justice. This could be jeopardised by referring to out-of-court dispute resolution mechanisms instead.

It is true that consumer disputes are often, but not always, characterised by relatively low amounts in dispute. Nonetheless, the underlying legal issues are of some weight, and even a small amount in dispute can be economically very significant for some consumers. The focus on extra-legal dispute resolution could lead to a situation in which the further development of the law no longer takes place at the level of both national courts and the ECJ, and in this respect, a legal deficit might be the result.

At the very least, therefore, it should be empirically verified that ADR in consumer matters is indeed an adequate substitute for the judicial enforcement of consumer rights.

Finally, the CCBE would like to bring to the attention of the European Commission the following past CCBE publications in relation to ADR and ODR, which are available on our [webpage](#):

- [CCBE comments on the ELI ENCJ Consultation Paper on The Relationship between Formal and Informal Justice the Court and Alternative Dispute Resolution \(31/03/2017\)](#);
- [CCBE position paper on the Digital Services Act and Digital Markets Act \(26/03/2021\)](#).

Improving compliance with consumer rights across the EU

Fields marked with * are mandatory.

Introduction

The [New Consumer Agenda](#) adopted by the European Commission in November 2020 flags that consumer rights should not merely remain on paper but be complied with by businesses. In this respect, all parties including consumers and traders and also their representatives and public authorities should work to ensure that consumer law is properly complied with.

When there are systematic issues of compliance by a given trader, public authorities should use enforcement tools to change the wrongful practice. When something goes wrong, individual consumers should be able to find an appropriate redress solution. Enforcement of consumer law is a top priority for the European Commission because it ensures the smooth functioning of the Single Market both for consumers and traders.

Enforcement of the EU laws protecting consumers is a shared responsibility. On one hand, it is the responsibility of competent authorities of EU/EEA countries to ensure that the collective interests of consumers are protected by using public means to verify that businesses respect consumer law and to sanction them, if necessary. EU consumer law is largely harmonised, hence the same law applies in all EU /EEA countries, this is why the [Consumer Protection Cooperation \(CPC\) Regulation \(EU\) 2017/2394](#) establishes a framework to allow national authorities to cooperate with each other within the EU/EEA.

On the other hand, consumers and their representative organisations must have sufficient knowledge of consumer rights to take the necessary steps to compel dishonest traders to respect those rights. In this respect, alternative dispute resolution (ADR) is an appropriate out-of-court mechanism for low-value disputes, which account for the vast majority of consumer disputes. The EU legal framework spelt out in the [ADR Directive 2013/11](#) requires Member States to put in place fair, accessible and affordable ADR systems covering all consumer markets.

Furthermore, the Commission is providing an [Online Dispute Resolution \(ODR\) System](#) in accordance with the provisions of the [ODR Regulation \(EU\) No 524/2013](#) which enables e-shoppers to seek the agreement of traders to use and resolve their disputes using an ADR procedure.

The Commission has to evaluate the functioning of the above-mentioned systems and publish two reports in 2023:

- The application report of the CPC Regulation in accordance with Article 40 of the said Regulation; and
- A joint ADR/ODR application report in accordance with Article 26 of the ADR directive and Article 21 of the ODR regulation.

This public consultation aims to gather views in this regard from the general public and relevant stakeholders and will feed into the analysis for those two reports. It complements a number of other information gathering exercises which are ongoing in parallel.

About you

* Language of my contribution

- Bulgarian
- Croatian
- Czech
- Danish
- Dutch
- English
- Estonian
- Finnish
- French
- German
- Greek
- Hungarian
- Irish
- Italian
- Latvian
- Lithuanian
- Maltese
- Polish
- Portuguese
- Romanian
- Slovak
- Slovenian
- Spanish
- Swedish

* I am giving my contribution as

- Academic/research institution
- Business association
- Company/business organisation
- Consumer organisation
- EU citizen
- Environmental organisation
- Non-EU citizen
- Non-governmental organisation (NGO)
- Public authority
- Trade union
- Other

* First name

Council of Bars and Law Societies of Europe

* Surname

CCBE

* Email (this won't be published)

president@ccbe.eu

* Organisation name

255 character(s) maximum

Council of Bars and Law Societies of Europe (CCBE)

* Organisation size

- Micro (1 to 9 employees)
- Small (10 to 49 employees)
- Medium (50 to 249 employees)
- Large (250 or more)

Transparency register number

255 character(s) maximum

Check if your organisation is on the [transparency register](#). It's a voluntary database for organisations seeking to influence EU decision-making.

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* Country of origin

Please add your country of origin, or that of your organisation.

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- Bermuda
- Bhutan

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- Bonaire Saint Eustatius and Saba
- Bosnia and Herzegovina
- Botswana
- Bouvet Island
- Brazil
- British Indian Ocean Territory
- British Virgin Islands
- Brunei
- Bulgaria

- Burkina Faso
- Burundi

- Cambodia

- Cameroon
- Canada
- Cape Verde
- Cayman Islands

- Central African Republic
- Chad
- Chile
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- Ghana
- Gibraltar
- Greece
- Greenland

- Grenada
- Guadeloupe

- Guam

- Guatemala
- Guernsey
- Guinea
- Guinea-Bissau

- Guyana

- Haiti
- Heard Island and McDonald Islands
- Honduras
- Hong Kong

- Hungary

- Iceland
- India
- Indonesia
- Iran

- Iraq

- Ireland
- Isle of Man
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- Montserrat
- Morocco
- Mozambique
- Myanmar/Burma

- Namibia
- Nauru

- Nepal

- Netherlands
- New Caledonia
- New Zealand
- Nicaragua

- Niger

- Nigeria
- Niue

- Norfolk Island
- Northern Mariana Islands
- North Korea
- North Macedonia
- Norway
- Oman
- Pakistan

- Palau

- Palestine
- Panama
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- Sri Lanka
- Sudan
- Suriname
- Svalbard and Jan Mayen
- Sweden
- Switzerland

- Syria

- Taiwan
- Tajikistan
- Tanzania
- Thailand

- The Gambia

- Timor-Leste
- Togo

- Tokelau
- Tonga

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| <input type="radio"/> Denmark | <input type="radio"/> Liberia | <input type="radio"/> Saint Lucia | |

The Commission will publish all contributions to this public consultation. You can choose whether you would prefer to have your details published or to remain anonymous when your contribution is published. **For the purpose of transparency, the type of respondent (for example, 'business association', 'consumer association', 'EU citizen') country of origin, organisation name and size, and its transparency register number, are always published. Your e-mail address will never be published.** Opt in to select the privacy option that best suits you. Privacy options default based on the type of respondent selected

* Contribution publication privacy settings

The Commission will publish the responses to this public consultation. You can choose whether you would like your details to be made public or to remain anonymous.



Anonymous

Only organisation details are published: The type of respondent that you responded to this consultation as, the name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your contribution will be published as received. Your name will not be published. Please do not include any personal data in the contribution itself if you want to remain anonymous.

Public

Organisation details and respondent details are published: The type of respondent that you responded to this consultation as, the name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your contribution will be published. Your name will also be published.

I agree with the [personal data protection provisions](#)

Questionnaire

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

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

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

- None
- Less than 20%
- 20% to 60%
- More than 60%
- Not applicable

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 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

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="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Alternative Dispute Resolution (out-of-court e.g. mediation, arbitration)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Lawyer	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Consumer Association	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Claims company	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Court	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Collective action	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
National enforcement authority	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
European Online Dispute Resolution platform	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other (please specify below)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

5. What are the best channels to learn more about ADR systems?

at most 3 choice(s)

- 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)

6. Which are the top challenges which make the use of ADR by consumers and traders difficult in your country?

at most 5 choice(s)

- 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)

7. Among the sentences below, which are the most relevant to promote the use of ADR systems?

at most 3 choice(s)

- 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 specify

Social and tax incentives or priority status given to cases which were, prior to the referral to court, subject to, for example, mediation.

8. In your view, what is most important for a consumer when choosing an ADR process to resolve a dispute?

at most 3 choice(s)

- 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)

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="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Not everybody can use digital tools	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
It is unclear who runs online dispute resolution systems and what is their value	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Online traders have their own online systems and they function well	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Online traders system are efficient	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

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

at most 3 choice(s)

- 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)

Please specify

Within this context, the CCBE wishes to draw attention to some of its publications in relation to the deployment of AI tools:

- CCBE considerations on the Legal Aspects of AI (20/02/2020) (accessible at: https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/IT_LAW/ITL_Guides_recommendations/EN_ITL_20200220_CCBE-considerations-on-the-Legal-Aspects-of-AI.pdf);
- CCBE Response to the consultation on the European Commission's White Paper on Artificial Intelligence (05/06/2020) (accessible at: https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/IT_LAW/ITL_Position_papers/EN_ITL_20200605_CCBE-Response-to-the-consultation-regarding-the-European-Commission-s-White-Paper-on-AI.pdf);
- CCBE position paper on the proposal for a regulation laying down harmonised rules on Artificial Intelligence (Artificial Intelligence Act) (08/10/2021) (accessible at: https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/IT_LAW/ITL_Position_papers/EN_ITL_20211008_CCBE-position-paper-on-the-AIA.pdf).

As can be seen, these papers mainly focus on aspects related to the rule of law, administration of justice and fundamental rights.

In relation to AI assisted systems for consumer disputes, the CCBE wishes to highlight the importance to not only consider the potential benefits of the use of such tools, but also to take into account the potential drawbacks and risks for users of such systems. As is already well known, AI systems may contain hidden biases or identification errors in the datasets which are used to educate the relevant system. Hence, it cannot be taken for granted that AI assisted systems for consumer disputes will function flawlessly. On the contrary, there is a real risk that parties may be misinformed and therefore led to wrong conclusions or decisions.

The CCBE, therefore, considers that the deployment of AI assisted systems for consumer disputes should always be accompanied with a thorough risk assessment, the findings of which should be explicitly recognised and addressed before being used in practice. The use of such systems should not undermine the right to a human judge. Particular attention should be given to the following aspects:

- The quality of training data sets;
- The keeping of records and data;
- Information on the purpose and the nature of AI systems;
- Robustness and accuracy of AI systems;
- Human oversight;
- Clear liability and safety rules.

In addition, the CCBE also stresses that the requirement of explainability is of particular importance for a dispute resolution mechanism, i.e. the ability to explain both the technical processes of an AI system and the related human decisions.

[Please note that the CCBE has also prepared an introductory remark on the consultation, which will be sent to the European Commission via email.]

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?

at most 3 choice(s)

- 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 below)
- I don't know

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

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?

at most 5 choice(s)

- 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)

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

Contact

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