

EUROPEAN CONSUMER
CENTRES NETWORK

ADR IN EUROPE

AN ECC-NET PERSPECTIVE

SUMMARY

The 29 European Consumer Centres (ECC-Net) help consumers engage in cross-border transactions more confidently by providing them with free information and advice on their rights and assist them in resolving cross-border consumer complaints. More than 120.000 consumers are assisted each year.

In May 2022, the ECC-Net conducted an in-depth study among all ECCs on their practical experience with national ADRs in the handling of cross-border disputes. The survey covered both cooperation between ECC-Net and ADRs and the functioning of ADRs.

The survey also identified the main obstacles in practice when European consumers try to engage in ADR cross-border dispute settlement and shows possible improvements. The obstacles include lack of trader engagement and compliance and too much variation in

coverage and quality when comparing ADRs in different countries and sectors. Language barriers and lack of easily accessible online procedures were some of the problems most often mentioned.

However, the survey also revealed that the ECCs in many countries report that ADRs are working well and that the ECCs and ADRs engage in knowledge sharing and cooperation activities on a national level.

The recommendations based on the survey results include the importance of ensuring more trader participation in cross-border ADR and the necessity to work for effective full ADR coverage in the EU. Recommendations also include finding practical ways to overcome language barriers and improve the online procedures and accessibility of ADRs in another country as well as strengthening the role of the ECC-Net in cross-border ADR dispute settlement.

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QUICK, CHEAP AND FLEXIBLE

Quick, cheap, neutral and flexible alternative dispute resolution (ADR) mechanisms are very important in cross-border commerce, where consumers face higher barriers when it comes to enforcing their rights.

In addition, traders offering goods and services in the EU via cross-border transactions benefit from easy-accessible, low-cost out-of-court redress mechanisms such as ADR/ODR.

The ECC-Net engages in thousands of cases each year where consumers and traders in different EU countries find themselves in a dispute which needs assistance from an ADR. Many

ADRs in the EU have streamlined processes and good knowledge in handling national cases, but the same is not always true when it comes to handling cross-border disputes. The 29 European Consumer Centres (all EU Member States, Norway, and Iceland) carried out an in-depth survey conducted via Webropol in May 2022 which has been answered by all 29 ECCs, thus providing a full view from the ECC-Net as a whole and 29 individual countries. This study gathered the experiences from ECC-Net case handling and cooperation with ADRs with a focus on barriers for consumers and on how to strengthen ADR in the EU.

MAIN CONCLUSIONS BASED ON THE SURVEY AND ECC-NET RECOMMENDATIONS

TRADER ENGAGEMENT AND COMPLIANCE

European Consumer Centres listed traders' unwillingness to participate in the dispute resolution procedure or failure to comply with the recommendation given by the ADR entity as the main area for improvement.

If a trader announces in advance that it does not intend to participate in the process, in many countries it is not expedient to take the dispute concerning this trader to a dispute resolution entity if trader involvement is necessary for the ADR to give an opinion or come to a decision. From the trader's perspective, it should be noted that in many cases they refrain from participating in an ADR-procedure because they usually have

to pay for the procedure, whereas it is free of charge for the consumer.

But also, non-compliance with ADR decisions and recommendations in countries and situations where ADRs provide such solutions is an issue, for consumers and ECCs representing their interests. Usually there are no sanctions involved if a trader doesn't follow such outcome. In many countries consumers are not even informed by ADRs about the compliance rate of specific traders, as name and shame are not an option. Sector specific recommendations are often generic, not targeted at specific traders.

Recommendations

More trader participation in dispute resolution procedures and compliance with decisions must be ensured.

One way to ensure this would be to operate with only small fees for trader participation as to encourage traders to actively engage in ADR. Another way would be to implement consequences for traders which are not participating in ADR such as (binding) rulings based only on the presentation from the consumer and the access to claim legal costs from the traders decided against. Other ways to stimulate participation and compliance would be to increase

the incitements for traders to participate in ADR and complying with decisions. Some ADRs offer traders access to services such as data and guidance that can be used by the companies to improve customer services. Another example could be to limit access to a trustmark or similar only to traders complying with ADR decisions (a "positive list"). Or the other way around to more actively use "name and shame" lists ("negative list") for traders not complying with ADR decisions. Such lists can be an important communication tool for those guiding consumers about whom to engage with.

VARIATION IN COVERAGE AND QUALITY

The survey done by the ECCs underlines that ADR coverage and the quality of ADRs vary considerably. In some countries, the ECCs report that ADRs offer good service and support to consumers from other EU countries. In other countries the situation is reported to be the complete opposite with fragmented ADR coverage and consumers facing insuperable barriers when trying to make use of ADRs in a cross-border dispute. The following three obstacles have to be tackled to ensure a more coherent and effective ADR scheme in Europe:

Lack of coverage

The ECCs considered the absence of an ADR entity competent to deal with disputes in some countries a remarkable obstacle. In others, even though ADRs exist, they do not cover an entire sector or all traders. Even in those countries where full coverage is appraised, gaps in the system lead to traders not being subject to ADR procedures.

Language barrier

Language difficulties were also highlighted as consumers have to face the reality of 24 official EU languages. Most ECCs hoped that ADR entities would expand their language range to cover not only the official language(s) of their country of establishment but also English, in particular. Today there are dispute resolution entities in, for example, Germany, Belgium and Latvia that offer the possibility to use English as the language of processing.

Easily accessible online procedures & vulnerability of consumers

Feedback from the ECCs clearly shows a need for more use of easy accessible online procedures by national ADRs that engage in cross-border dispute handling. In cross-border e-commerce easy accessible online procedures are a must and in today's economy absolutely possible. The same goes for dispute handling where legaltech solutions is a rapid growing business.

However, digital fragmentation and new vulnerabilities need to be taken into account. ECCs are well aware of the difficulties some consumers incur when trying to e.g. use online complaint forms. Not all consumers are in a position where they can, alone by themselves, file for an ADR procedure and follow through. In the public interest of consumer protection safety nets need to be put in place, with sufficient human resources, to assist those in need.

Recommendations

Full coverage of every sector must be ensured and all traders should be affiliated to an ADR-body. The creation of sectorial ADR as well as truly residual ADRs should be encouraged to guarantee this.

Consumers, regardless of residency in the ADR country, should be able to navigate in the ADR scheme and to easily identify the relevant ADR. Effortless pathways must therefore be ensured.

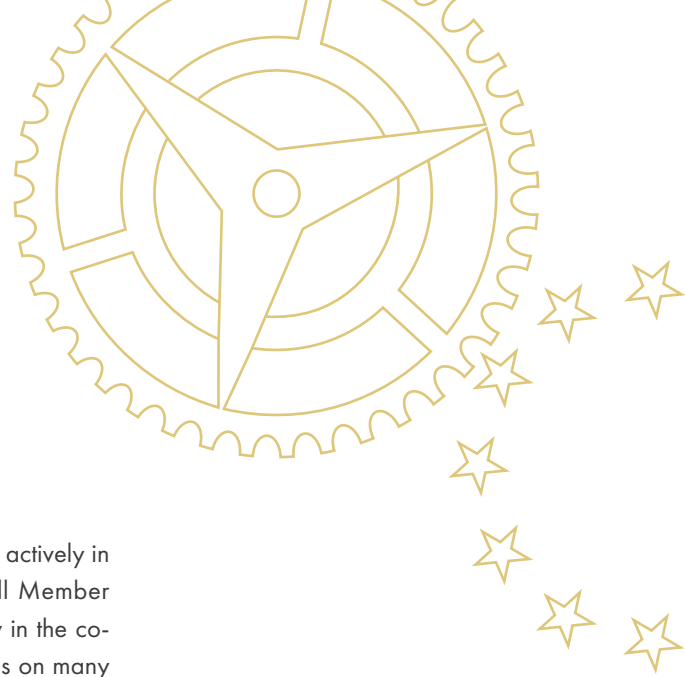
ECC-Net has positive experiences with pan-European ADRs that welcomes complaints in cross-border disputes from consumers from many countries. Such ADRs have overcome the barriers which national ADRs struggle with when they receive complaints from consumers from another country.

Recommendations

ADRs in the EU should accept more than one language, and accept English in particular, to allow foreign consumers to effectively apply to their services but also to cover foreigners living on their territories. Alternatively, consumers must be offered help to tackle language barriers all the way through an ADR procedure from filing the complaint to understanding the decision.

Recommendations

Vulnerable users' experiences must be taken into consideration when setting up or developing further online procedures. Several methods of effective access to ADR services must be guaranteed to allow consumers multiple access. Human support should be able to help those struggling with digital procedures. Therefore, it would be relevant to look for ways to strengthen the ECC-Net's role in cross-border dispute resolution enabling the Network to take upon it the human dimension necessary for cross-border cases. To do this it is necessary to re-think the current EU ADR/ODR scheme and ensure a more active use of the ECC-Net's expertise and services.



THE ROLE OF THE ECC-NET IN THE EUROPEAN ADR SCHEME

The ECCs do a lot already in practice to ease the consumers' access to and use of ADRs situated in other EU countries. There is within the Network considerable focus on enabling all consumers - including those considered as vulnerable consumers - to make use of cross-border ADR dispute settlement schemes.

The most frequent assistance is to broaden our services to include help with filing complaints and to translate correspondence and decision when consumers are not able to do so themselves due to e.g. language barriers and difficulties in understanding procedures and forms.

However, the ECCs are limited in their access to assist consumers due to scarce resources and the constraints linked to the current role of the ECCs.

The ECCs engage themselves actively in cooperation with ADRs in all Member States. The level and intensity in the cooperation varies and depends on many factors related to the ADR scheme in each country.

Regular meetings with ADRs, cooperation protocols and agreed contact persons, trainings, joint events and information material, joint case law studies and ECC employees participating in ADR committees are all examples of ways ECCs cooperate with ADRs today.

On the other hand, ECCs also reports on situations where cross-border cases are looked at as problematic by the ADRs and where the status of the ECCs makes cooperation difficult.

Recommendations

It is evident that for many European consumers the access to ADR in a cross-border dispute isn't a real possibility today. Not only because of lack of ADR coverage or trader engagement, but simply because it is not possible for them to manoeuvre through the ADR complaint handling process. A different language in combination with non-familiar procedures can easily be an overwhelming barrier. Not only for vulnerable consumers, but also and particularly for vulnerable consumers. On the other hand, from the perspective of the ADR, dealing with cross-border

complaints can be burdensome and problematic. Such cases often require specialised knowledge and/or language assistance when assisting a consumer from another EU country. The ODR platform and the limited service that the ECC-Net are able to offer consumers and ADRs today is not enough to clear away the problems with filing and handling cross-border complaints with many notified ADRs throughout all of Europe. Therefore, a role for the ECC-Net as specialised assistance service to ADRs in cross-border complaints should be developed and formalised. Such

assistance includes both to help consumers to use the ADR procedure as well as to offer help to ADRs for instance when the cases raise questions about applicable law in other countries. Broadening the role of the ECC-Net in cross-border ADR is not possible within the current contractual framework and funding and it will require allocation of more resources to the ECC-Net. In addition, such service must go hand-in-hand with more resources to the ADRs and to further strengthen consumers', traders' and ADRs' incitements to use the ODR platform.

DETAILED SURVEY QUESTIONS AND RESPONSES

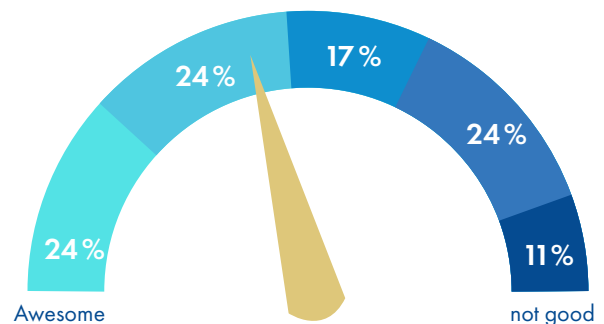
ADR COVERAGE AND AVAILABILITY FOR CROSS-BORDER CASES

Survey conducted via Webropol in May 2022. Invitation e-mail and link sent to the Directors of each ECC. All 29 ECCs answered the survey.

The survey touched upon ADR coverage and availability for cross-border cases and the responses were quite diverse among the centres depending on their own experience with their national ADR bodies.

As the Directive 2013/11/EU followed a minimum harmonization approach it is very normal that the below table indicates such big discrepancies between “awesome” coverage and “so-so” coverage, Member States having taken different approaches.

Overall, how do you see the ADR coverage/availability in your country (cross-border cases)?



Awesome – When we do not succeed finding an amicable solution our ECC is always able to transfer or signpost consumers with a relevant cross border case to an ADR in our country.

Very good – When we do not succeed finding an amicable solution our ECC is very often able to transfer or signpost consumers with a relevant cross border case to an ADR in our country.

Good – When we do not succeed finding an amicable solution our ECC is often able to transfer or signpost consumers with a

relevant cross border case to an ADR in our country.

So-so – When we do not succeed finding an amicable solution our ECC is only sometimes able to transfer or signpost consumers with a relevant cross border case to an ADR in our country.

Not good – When we do not succeed finding an amicable solution our ECC is seldom or never able to transfer or signpost consumers with a relevant cross border case to an ADR in our country.

Our centres were also asked to comment on the performance of the ADR bodies of their countries when it comes to cross-border cases based on their own experience. Interestingly, 13 centres responded that the ADR performance in their country is more than good. While 7 centres responded that its sufficient and 8 responded that the performance is not adequate to the needs of consumers.

TRADER COMPLIANCE

The next topic examined, by the internal survey handed to all 29 ECCs, was about trader compliance. The statistics below clearly indicate that there are a few instances in which traders are obliged to or always comply with the ADR decision, but in most of the cases the compliance is left to the discretion of each specific trader.

Awesome – The traders are obliged to follow ADR decisions or always comply with the decisions from ADR.

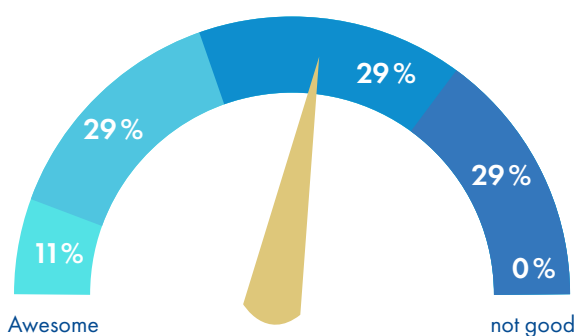
Very good – The traders almost always comply with the decisions from ADR.

Good – The traders often comply with the decisions from ADR.

So-so – The traders only sometimes comply with the decisions from ADR.

Not good – The traders seldom or never comply with the decisions from ADR.

Overall, how do you see the trader compliance with ADR?



ECC ASSISTANCE TO CONSUMERS WITH A CROSS-BORDER COMPLAINT

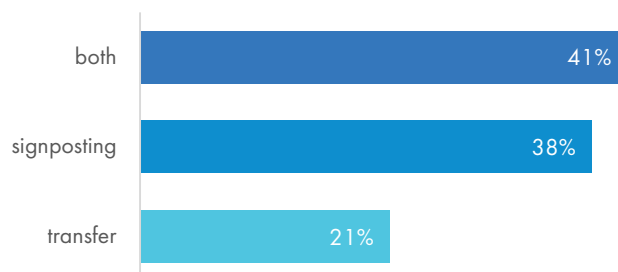
The ECCs current service/support level to consumers who have to turn to an ADR can be divided into two categories:

- + **Transfer** = Assist the consumer with filling the complaint to the ADR and monitor the case and communicate on behalf of the consumer during the ADR process.
- + **Signpost** = Inform the consumer (via the ECC in the consumers' country) about the possibility to turn to a certain ADR.

Signposting cases to ADR bodies:

Out of the 29 ECCs, 38% only signpost cases to an ADR body without intervening at the process or transferring the case. Among the reasoning for only signposting and not transferring cases as well, were:

- + ECCs signpost most commonly when the ADR allows submissions in English or other languages, and corresponds in these languages too, so consumers can do it directly also in cross-border cases.
- + The system requires the creation of personal credentials and/or payment of fees, which makes it mandatory for the consumer to be the one submitting the case.
- + ADR bodies refuse to accept cases submitted by the ECCs and require direct submission by the consumer.
- + Lack of ECC resources – signposting is less time consuming and the only option for a few ECCs.



“If there are no language difficulties and the consumer can easily do it himself, we are of course always available for questions and help. However, if the consumer is able and has no problems contacting the ADR body directly, we do not have to act as a mediator and can take the time for other consumers and thus work through the backlog that still exists in a more targeted way.”

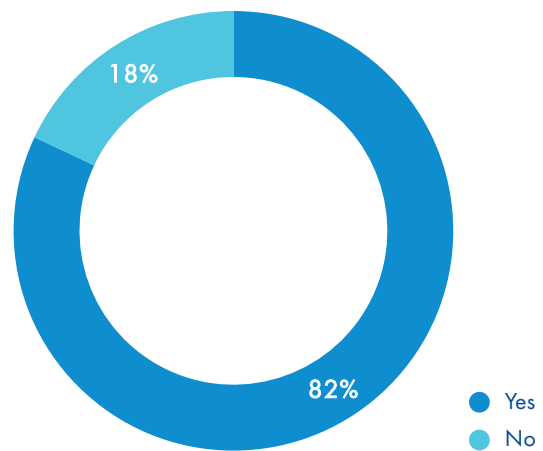
Comment by national ECC

Even though currently 11 ECCs signpost only instead of transferring cases as well to ADR bodies because of the reasons mentioned above, 9 out of them would actually help consumers to fill in the ADRs’ application forms as well as 8 out of the 11 would also help the consumers by translating ADR answers to their national language.

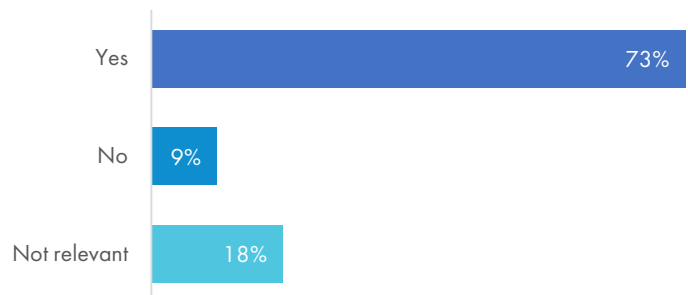
 8/11

8 out of the 11 would also help the consumers by translating ADR answers to their national language.

If your ECC signposts, would your ECC help consumers to fill in the ADRs application forms?



If your ECC signposts, would your ECC help consumers by translating answers of the ADR from national language?



TRANSFERRING CASES TO ADR BODIES:

When it comes to ECCs transferring cases to ADR bodies which includes active involvement of the ECC's legal advisors, the main criteria entailed in this decision are:

- + Consumers have credible claims and pressure will be added to the traders by the involvement of ECCs;
- + There are language barriers and consumers need assistance by the ECCs;
- + A cooperation protocol already exists between an ECC and an ADR body which eases the handling and follow up of the case on behalf of the consumer.

"We transfer cases to all notified ADRs if the consumer can not do so him/herself. For some ADRs we have a protocol of cooperation which eases the handling and follow up of the case on behalf of the consumer. For others we use the publically available means of contac."

Comment by national ECC

"Transfer if needed meaning that we in the specific case access that the consumer will not be able to pursue the case at the ADR without our assistance (mainly due to language issues hereunder that the online complaint form and the correspondence from the ADR is in [...]."

Comment by national ECC

„Due to the huge workload of cross border complaints we do not have capacity to deal with cases to be transferred to ADR. Furthermore, if no agreement is reached at ECC-Net level in the cross border complaint (due to the lack of cooperation intention of the [...] traders), in our opinion there is hardly any chance to reach an agreement before an ADR."

Comment by national ECC

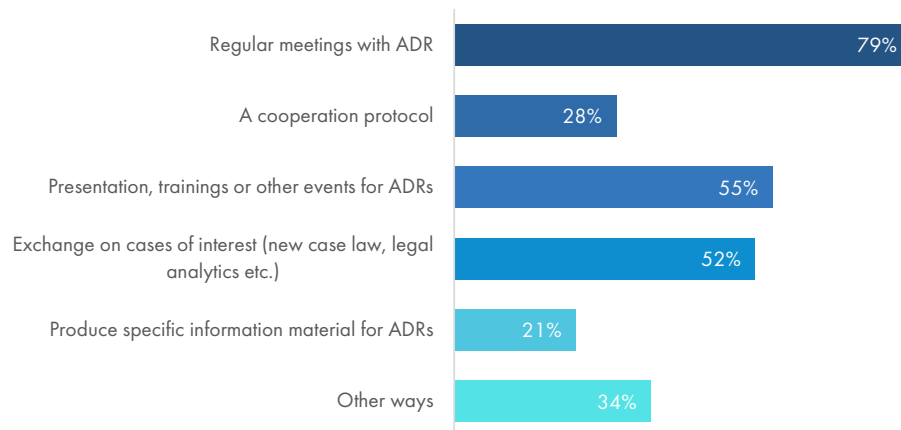
Comments and conclusions:

- + The ECCs current service/support level to consumers who have to turn to an ADR can be divided into two categories:
 - **Transfer** = Assist the consumer with filling the complaint to the ADR and to monitor the case and communicate on behalf of the consumer during the ADR process
 - **Signpost** = inform the consumer (via the ECC in the consumers' country) about the possibility to turn to a certain ADR
- + ECCs signpost most commonly when the ADR allows submissions in English or other languages, and corresponds in these languages too, so consumers can do it directly also in cross-border cases.
- + Reasons to transfer relate to situations where consumers cannot do it alone and need assistance for language reasons, for example.
- + The forms of concrete help an ECC can provide to consumers in ADR processes relate also to ECC resources.
- + Most ECCs which signpost help consumers also to fill in ADR application forms. Some ECCs that signpost also translate answers from the ADR. For resource reasons these are not always possible.
- + Sometimes transferring is not possible if personal registration by the consumer is needed for the ADR process. ADR handling fees to be paid by consumers might also be a barrier to representing consumers.
- + In addition, the legal assessment of the case can implicate that there is little chance of positive outcome of the ADR procedure.
- + Sometimes there is no competent ADR for a case/specific sector.

FURTHER ECC COOPERATION WITH ADRs



The European Consumer Centres value an active dialogue and exchange with their national ADR bodies. When it comes to cooperation activities between ECCs and ADR bodies, 23 out of 29 ECCs are having regular meetings and exchanges with ADR bodies. From the responses of the European Consumer Centres, it is apparent that a quite active dialogue and cooperation between ECCs and ADRs already exist and can result in addressing existing burdens in the area of ADR.



Comments and conclusions:

- + ECC cooperation with ADRs varies by country but is often active. Pandemic has affected cooperation to some extent.
- + Active cooperation between ECCs and ADRs benefits both traders and consumers.
- + Regular meetings are the most common way of cooperation between ECCs and ADRs.
- + Case cooperation, information sharing, presentations, trainings or other events were also common.
- + Examples of the good practices highlighted by the ECCs include:
 - Regular meetings to discuss cases.
 - Annual meetings or a seminar with all ADRs and the ECC.
 - Joint PR & information material produced together with an ADR.
 - Agreed cooperation protocol between an ECC and an ADR.
 - In several countries, an ADR exists within the same host organisation as the ECC, making cooperation even more straightforward.
- Having a special contact person for the ECC within the ADR.
- ECC employees participating in ADR committees.

IMPROVING THE ADR SCHEME

The ECC-Net was asked to also suggest improvements when it comes to the better functioning of ADRs in cross-border disputes. Trader acceptance and engagement was the most voted aspect for improvement with 65.5% of ECCs choosing it. The next two receiving 44.8% and 41.4% of ECCs answers were about overcoming language barriers and creating better fitted online interfaces and procedures to make participation from another EU country feasible for consumers.

Among other aspects that could possibly be improved were:

- + Better coverage & sector specialised ADR bodies
- + Faster case-handling, prevention of backlog
- + Lower fees
- + Better understanding of applicable law of another EU country and expertise
- + Better information and awareness of consumers
- + Traders to adhere to sectoral ADRs

If ADR(s) in your country could be more relevant for consumers in cross-border disputes, what would be the most important things to improve?

Better information of consumers about the decision making process (which arguments have been taken on board by the ADR, is this conform with consumer rights or has there been a decision in equity taking on board). Also arguments from the trader or their experience of success with the trader on an amicable ground.

Comment by national ECC

In your opinion, what would it take to improve the ADR scheme in your country and make ADR work better in cross-border disputes?

Amendment of the law, so that (a) trader engagement in ADR procedures could be mandatory, instead of only optional, (B) ADR entities could publicly name traders who are not fulfilling their obligation to engage in ADR procedures.

Comment by national ECC

Trader participation needs to be dramatically increased. Be it through legal measures or via financial incentives.

To achieve more ADRs in cross-border cases, the language barrier must fall. Either the ODR platform is improved in such a way that users can rely on it or, which would be the better option, the lawyers of the ECCs would all uniformly forward the cases to ADR bodies.

Comment by national ECC

The main challenges concern handling time (it can take several years for an ADR entity to issue a decision, because there are not enough resources) and language barriers (for example, the main ADR in [...], accepts complaints and other documentation only in the official languages of [...], in which case our ECC's translation input is needed). Also, foreign consumers should be able to initiate by themselves the ADR process using the electronic service. Our main ADR has such a service, but it works only in our national languages.

Comment by national ECC



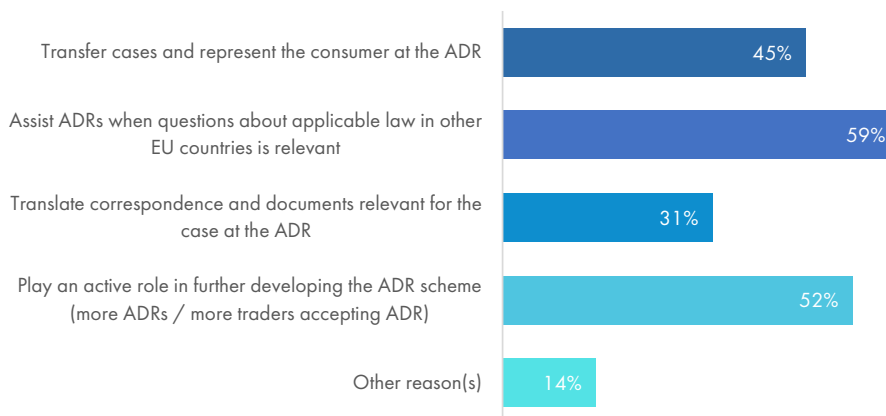
THE ROLE OF THE ECC-NET: AN ENGAGEMENT FOR THE FUTURE

In order to overcome burdens consumers face, there is a common willingness among the European Consumer Centres to actively help consumers as much as possible when it comes to an ADR dispute. Many consumers still need human interaction and personalised help. The same willingness applies to the cooperation of ECCs with their national ADR bodies. Consumers

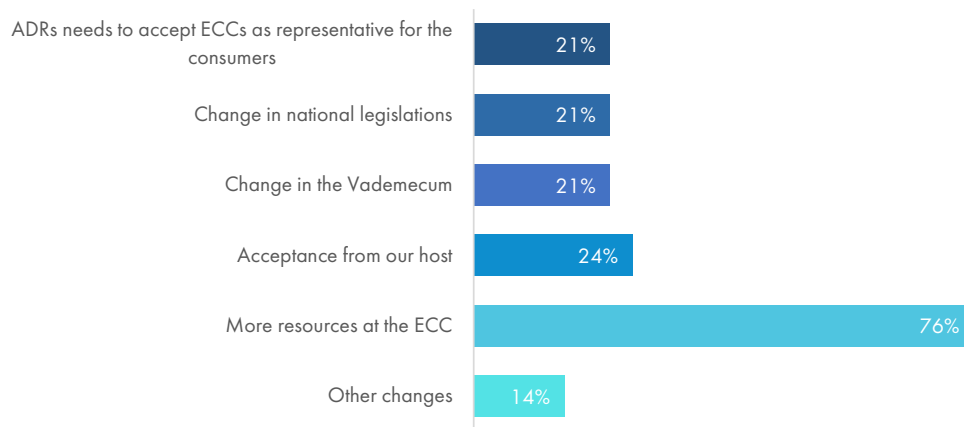
and ADRs receiving their complaints could benefit from the positioning, legal expertise, and uniqueness of the Network, being able to rely on 29 centres in each EU country, Norway and Iceland.

The next two tables describe the assistance ECCs feel they could provide to consumers and ADRs but also the requirements that need to be fulfilled in order to strengthen our collaboration and involvement.

If your ECC, as trader ECC, should do more to help consumers with a cross-border case that can be handled at an ADR, what kind of assistance would then be most relevant in your country
Select the 3 most important ones?



If your ECC, as trader ECC, should do more than today to help consumers with cross-border cases at an ADR, what would need to change in order for your ECC to be able to help more?



Comments and conclusions:

- + The ECCs' experience with ADR coverage and ADR performance differs considerably from country to country, but the fewest ECCs find that ADR in their country is "Not good" in general.
- + In the same way, experience with trader compliance with ADR decisions might range for 19 ECCs from "awesome" to "good" but still 8 find it "so-so". Trader compliance was the number one area for improvement mentioned by the ECCs.
- + Very clear top 3 issues have been identified when it comes to what has to be improved to make ADR more relevant according to the ECCs:
 - More trader acceptance (trader engagement in ADR is voluntary)
 - Overcoming language barriers preventing foreign consumers from using ADR
 - Better online procedures and possibility to participate in the ADR process from another country
- + If the ECCs should do more to assist consumers and ADRs, the ECCs would find it relevant to assist ADRs with questions regarding applicable law in other countries, to be actively involved in further developing the ADR scheme and to represent consumers at the ADR.
- + However more resources are needed if the ECC-Net should assist consumers more and increase their involvement in cross-border ADR.

