

Consumer Dispute Resolution in the World



United
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* Although listed, this report also draws on open-source information, data and materials gathered from publications and presentations produced by the Government of Australia, Government of the Philippines and the European Union and European Commission.

ABBREVIATIONS

ACM	Authority for Consumers and Markets, The Netherlands (De Autoriteit Consument & Markt)
ADR	Alternative dispute resolution
AI	Artificial intelligence
ARN	National Board for Consumer Disputes, Sweden
ASEAN	Association of Southeast Asian Nations
B2B	Business-to-business
B2C	Business-to-consumer
BEUC	The European Consumer Organization (Bureau Européen des Unions de Consommateurs)
BMJV	Federal Ministry of Justice and Consumer Protection, Germany (Bundesministeriums der Justiz und für Verbraucherschutz)
BPKN	National Agency for Consumer Protection, Indonesia
CCA	China Consumers Association
CDR	Consumer dispute resolution
CIGI	Centre for International Governance Innovation
CIMAAL	Centro de Arbitragem de Conflitos de Consumo do Algarve, Portugal
CMA	Consumer and Markets Authority, United Kingdom
COVID-19	2019 Novel Coronavirus
DGC (N)	Dutch Foundation for Consumer Complaints Board, the Netherlands (Stichting Geschillencommissies voor Consumentenzaken)
DGC (P)	Directorate General for Consumer Affairs, Portugal (Direção Geral do Consumidor)
DGCCRF	Directorate-General for Competition, Consumer Affairs and Fraud Prevention, France (Direction générale de la concurrence, de la consommation et de la répression des fraudes)
DODR	The UNCTAD Project, ‘Delivering digital trading infrastructure and online dispute resolution for consumers as means to improve international trade and electronic commerce.’
ECC France	European Consumer Centre, France
ECC Germany	European Consumer Centre, Germany
ECC Net	The European Consumer Centres Network
FCAB	Federal Consumer Affairs Bureau, Switzerland
FOS	Financial Ombudsman Services, United Kingdom
HCCH	Hague Conference on Private International Law
ICPEN	International Consumer Protection and Enforcement Network
KCA	Korea Consumer Agency, Republic of Korea
MGP	Mumbai Grahak Panchayat, India
MERCOSUR	The Southern Common Market

NCT	National Consumer Tribunal, South Africa
OCPB	Office of the Consumer Protection Board, Thailand
ODR	Online dispute resolution
OECD	Organization for Economic Cooperation and Development
PROFECO	General Counsel for Consumers, Mexico (Procura Federal del Consumidor)
SAMR	State Administration for Market Regulation, China
SENACON	Consumer Protection Authority, Brazil (Secretaria Nacional do Consumidor)
SIC	Superintendence of Industry and Commerce, Colombia (Superintendencia de Industria y Comercio)
MSME	Micro, small and medium-sized enterprise
UNCTAD	United Nations Conference on Trade and Development
UNGCP	United Nations Guidelines for Consumer Protection
UNIDROIT	International Institute for the Unification of Private Law
UNCITRAL	United Nations Commission on International Trade Law

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1. INTRODUCTION

Access to and availability of dispute resolution and redress¹ mechanisms are a basic legitimate need of consumers,² as recognised by the United Nations Guidelines for Consumer Protection³ (henceforth as the United Nations Guidelines, or UNGCP.)

Dispute resolution and redress mechanisms should be delivered to consumers in a fair, affordable, and speedy way whilst protecting related consumer rights throughout the process.⁴ The UNGCP contain guiding principles on design criteria for dispute resolution and redress mechanisms. They highlight the need for fair, effective, transparent, and impartial mechanisms to address consumer complaints⁵, including for cross-border cases. This is complemented by the UNCTAD Manual on Consumer Protection⁶ which explains in further detail specific parts of the Guidelines.

Subsequently, the UNCTAD secretariat produced a note⁷ which detailed the way forward in harnessing the potentials of dispute settlement mechanisms involving consumer cases. Focusing on consumer dispute resolution (CDR) and redress, this note introduced the

rationale for the legal nature of CDR and redress with reference to specific dispute settlement approaches. These include court, collective redress⁸, public and regulatory enforcement action, and ADR.

However, well functioning dispute resolution and redress mechanisms are not yet readily accessible or available in many parts of the world. Amongst the calls to action for wider and expedited implementation of effective dispute resolution and redress mechanisms is the aspiration, expressed by various countries, for the development of internationally coordinated CDR systems. UNCTAD's informal working group on consumer protection in electronic commerce⁹ issued a report on E-Commerce Cross Border Cooperation¹⁰, which revealed that a common interest in global online dispute resolution (ODR)¹¹ mechanism.

For the purposes of this report, *CDR is used to collectively refer to all online and offline, judicial, and non-judicial approaches for resolving consumer*

¹ Redress refers to “Compensation for economic harm, whether in the form of a monetary remedy (e.g., a voluntary payment, damages, restitution or other monetary relief) or a conduct remedy with a restorative element (e.g., exchange of a good or service, specific performance or rescission of a contract).” OECD (2007). Available at: <https://www.oecd.org/sti/ieconomy/38960101.pdf>

² According to the UNGCP (guideline 3), “consumer” generally refers to a natural person, regardless of nationality, acting primarily for personal, family or household purposes, while recognizing that Member States may adopt differing definitions to address specific domestic needs.

³ UNGCP, General Assembly resolution 70/186 of 22 December 2015. Available at: [⁴ Such as privacy, transparency, cybersecurity, data protection, non-arbitrary decision, and so on.](https://unctad.org/en/Pages/DITC/CompetitionLaw/UN-Guidelines-on-Consumer-Protection.aspx; paragraph 5 : “The legitimate needs which the guidelines are intended to meet are the following: [...] (g) Availability of effective consumer dispute resolution and redress.”</p></div><div data-bbox=)

⁵ As opposed to ‘consumer dispute’, which refers to any type of disagreement between consumer and business, ‘consumer complaint’ refers to a specific type of dispute that involves expressed dissatisfaction from consumer. Consumer complaint can either be submitted as a one-way report to the authority or, if the claimant desires, seek resolution and/or redress by filing it through an out-of-court CDR mechanism.

⁶ See: [Manual on Consumer Protection 2017 \(unctad.org\)](https://unctad.org/en/PublicationLibrary/Manual-on-Consumer-Protection-2017.aspx)

⁷ TD/B/C.I./CPLP/11.

⁸ “Consumers who have suffered the same or very similar loss or harm caused by the same trader come together and seek redress in court as a group, in one legal claim.” BEUC (2017). Available at: https://www.beuc.eu/publications/beuc-x-2017-086_ama_european_collective_redress.pdf

⁹ See: <https://unctad.org/Topic/Competition-and-Consumer-Protection/working-group-on-consumer-protection-in-e-commerce>

¹⁰ UNCTAD's informal Working Group on consumer protection in electronic commerce E-Commerce Cross Border Cooperation Report, June 2022. Available at: https://unctad.org/system/files/information-document/ccpb_E-Commerce_Cross_Border_Report_Final_en.pdf

¹¹ ODR refers to any mechanism for resolving disputes facilitated by electronic communications and other information and communications technology that replaces in-person, face-to-face interactions. These can include online forms, telephone or videoconferencing that involve automated processes through the use of software. ‘Customer care and complaints functions’ provided by a business can be considered as part of online dispute resolution processes. If a dispute cannot be settled between the business and the consumer themselves, then an independent ‘online dispute resolution provider’ can step in to help resolve the dispute. Such examples include public online dispute resolution schemes on a national or regional level, private dispute online dispute resolution systems, certain digital payment systems, and e-litigation and e-courts. See UNCTAD (2018), available at https://unctad.org/system/files/official-document/cic-plpd11_en.pdf; see UNCITRAL (2016), available at: https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/v1700382_english_technical_notes_on_odr.pdf

complaints and disputes.¹² There are two types of CDR mechanisms: judicial and or out-of-court (alternative or ADR). ADR refers to any type of out-of-court dispute resolution mechanism, whether public, private or hybrid in nature via public-private partnership. ADR processes for consumers normally includes negotiation,¹³ mediation¹⁴ or conciliation¹⁵, ombudsman¹⁶ and arbitration.¹⁷ ADR can also include business in-house customer and complaints services, particularly as they relate to the early stages of ADR such as negotiation and/or mediation.¹⁸ Since ADR processes can be undertaken online, ODR is commonly understood to be a subset of ADR.

¹² As OECD (2007) notes, CDR involves “the use of mechanisms designed to provide consumers who have suffered economic harm resulting from transactions involving goods or services, including transactions across borders, the opportunity to resolve their complaints against businesses and to obtain redress.” Available at: <https://www.oecd.org/sti/ieconomy/38960101.pdf>

¹³ The first stage of communications between the parties: “If the negotiation does not result in a settlement within a reasonable period of time, the process proceeds to the next stage.” UNICITRAL (2016). Available at: https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/v1700382_english_technical_notes_on_odr.pdf

¹⁴ Involves the assistance of a third party to help business and consumer reach an agreement, and its format and process may vary from one country to another. For instance, in Argentina, there is a dispute resolution mechanism called “arbitration”, which is mediation carried out by the consumer protection authority. In the United States of America, it is possible to resort to consumer arbitration whereas in Brazil and in Europe arbitration is limited to parties considered equal in the dispute such as private companies.

¹⁵ Conciliation is “similar to mediation, but the independent third party has a more active role in suggesting what agreement should be reached.” (United Kingdom White Paper (2018). Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/698442/Final_report_-_Resolving_consumer_disputes.pdf)

¹⁶ Ombudsman scheme involves independent and impartial third-party intermediary who considers complaints, combining fact-finding, mediation, and adjudication (Ibid.) An ombudsman is a person who investigates complaints about organisations, free of charge to consumers, to try to resolve them without the claimant needing to go to court. An ombudsman may be a government authority. In Sweden, for example, the ombudsman is the head of the Swedish Consumer Agency (see: <https://www.konsumentverket.se/languages/english-engelska/>).

¹⁷ Arbitration is a binding and final procedure that is equivalent to court procedure but in the private sphere and may vary from one country to another.

¹⁸ As part of businesses’ duty of care to consumers, UNGCP guideline 11(f) instructs Member States to encourage businesses to set up CDR mechanisms. It contains principles on how to establish good business practices benchmarks when conducting commercial activities with consumers both online and offline.

However, as digitalization has been accelerating over the past decade, ADR and ODR are becoming increasingly intertwined.

In the digital era and, more recently, the COVID-19 pandemic environment, the word ‘alternative’ in ADR has become less meaningful. Its implied optional status relative to litigation is coming into question as experts increasingly recognize its necessity. Apart from ADR, there often exists few other practical and viable options through which consumers can resolve disputes effectively, especially for low value disputes.¹⁹ For the average consumer, litigation is not only costly financially and timewise, but the complex processes and legal jargons can be daunting as well. These factors can deter consumers from pursuing remedy altogether.

For these reasons, policymakers and practitioners have been advocating for ADR and ODR as the primary avenues for consumers who seek redress and justice.²⁰ Moreover, civil court judges have been using ‘ODR’ to refer to e-litigation and e-courts that are specifically designed and implemented with consumers in mind,²¹ despite ostensibly contradicting the very meaning of ODR as an out-of-court option.

Third-party, independent CDR schemes provided by public authorities, not-for-profit organizations (such as consumer association or publicly funded corporations), and for-profit private sector or commercial bodies most often appear in the ADR/ODR category, and they can also include in-house business or e-commerce platform customer services. The outcome of these approaches may be advisory (non-binding) or determinative (binding).

¹⁹ Ombudsman Association (2021: Interview; 2021 Survey).

²⁰ For example, this was one of the main goals behind the regulatory reform of ADR and ODR undertaken by the European Commission which began with the European Commission Recommendations 98/257/EC of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes and 2001/310/EC of 4 April 2001 on the principles for out-of-court bodies involved in the consensual resolution of consumer disputes were the first instruments to promote Consumer ADR in the European Union. This ultimately led to the development and implementation of the European ODR Platform. Chapter 1, Cortes (2016), Cortes P eds, *The New Regulatory Framework for Consumer Dispute Resolution*. See: <https://academic.oup.com/book/348>

²¹ International Council for Online Dispute Resolution (ICODR 2021). Special meeting on 6 May 2021. Examples include internet courts in the Chinese cities of Beijing, Guangzhou, and Hangzhou.

Research aims, data and methodology

In the context of how CDR has been evolving and the ongoing international efforts to implement effective mechanisms, this report seeks to take stock of the latest developments in further advancing the consumer protection agenda relating to CDR. To this end, this report aims to answer three questions through a research snapshot of the current state of play:

1. What are the legal, policy and institutional frameworks for CDR in selected countries and territories, and at the regional level?
2. What challenges do policymakers and practitioners face with regards to the design, development, implementation, operation and enforcement of CDR?

3. What are the best practices of selected CDR models and schemes that make them effective, and what lessons can be drawn to improve CDR?

To answer these questions, a mixed methods approach was employed to gather primary data from the field and desk-based secondary data. With regards to the primary data, UNCTAD conducted questionnaire surveys and interviews with various stakeholder groups. Overall, datasets were derived from 27 countries across six continents.

Based on the findings and analyses, this report discusses the policy implications and summarizes the proposed policy recommendations.

2. INTERNATIONAL INSTRUMENTS FOR CONSUMER DISPUTE RESOLUTION

Consumer Law is a relatively young branch of law²² in both national and international legal systems. The Consumer Bill of Rights was conceived in the 1960s when four basic consumer rights were set out by President John F Kennedy of the United States.²³ After more than half a century, however, the UNGCP remain the only global legal instrument for consumer protection globally.²⁴ This chapter presents the international initiatives up to date.

2.1 The United Nations Guidelines for Consumer Protection

The Guidelines are a valuable set of principles that set out the main characteristics of effective consumer protection legislation, enforcement institutions and redress systems. These principles aim to assist Member States to achieve and maintain adequate protection for their consumer populations.

The Guidelines apply to business-to-consumer transactions, including the provision of goods and services by State-owned enterprises to consumers.²⁵ They help to promote international enforcement cooperation among Member States and encourage the sharing of experiences in consumer protection.²⁶

Despite the soft law nature of the Guidelines, they have been widely implemented by Member States and its principles have been greatly influential in advancing consumer protection in developing countries.²⁷

According to guideline 39 of the UNGCP, particular attention should be paid to ensuring better access to mechanisms for cross-border CDR.

General Assembly resolution 70/186²⁸ on consumer protection explicitly called for special attention to be devoted “to the development of effective consumer protection in electronic commerce and that certain consumer protection issues, such as applicable law and jurisdiction, may be addressed most effectively through international consultation and cooperation.” Although Member States have been cooperating in the exchange of information and practices on consumer protection policies, major hurdles remain.²⁹ These significant legal and practical constraints impede effective cross-border CDR. Left unaddressed, consumers will continue to be left behind and prevented from accessing justice readily and speedily when they encounter cross-border disputes.³⁰

A comprehensive and effective global legal framework and enforcement network for CDR, should it become available, would ideally consist of a set of international rules and legislation, and be enforced by CDR schemes and consumer authorities.³¹ Based on these rules, businesses and consumers should be able to foresee the consequences of rule violations, and behave within the boundaries of these rules.

2.2 The OECD Recommendation on Consumer Dispute Resolution and Redress

The Recommendation on Consumer Dispute Resolution and Redress, adopted on 12 July 2007, builds on the previous 1999 OECD Guidelines for Consumer Protection in the Context of Electronic Commerce, which call for further development of dispute resolution mechanisms, and the 2003 OECD Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices Across Borders,

²² Ramsay, I. *Consumer law and policy: Text and materials on regulating consumer markets* (3rd ed.). Oxford: Hart Publishing, 2007.

²³ See: <https://hoofnagle.berkeley.edu/2015/05/07/president-kennedy-consumer-bill-of-rights-march-15-1962/>

²⁴ First adopted by the General Assembly in 1985 and subsequently expanded and revised in 1999 (by the Economic and Social Council in resolution 1999/7 of 26 July 1999) and 2015 (resolution 70/186 of 22 December 2015).

²⁵ UNGCP II, Scope of application.

²⁶ Preface of the Guidelines.

²⁷ TD/B/C.I/CLP/23.

²⁸ See: [General Assembly Resolution 70/186 on Consumer protection, Adopted on 22 December 2015 \(unctad.org\)](#)

²⁹ See: [Manual on Consumer Protection 2017 \(unctad.org\)](#)

³⁰ See: [38960101.pdf \(oecd.org\)](#)

³¹ See G. Howells, et al. *Consumer law in its international dimension*, in G. Howells, et al. *Handbook of Research on International Consumer Law*. Second ed., 2018.

which specifically recommend further work on consumer redress.

This OECD Recommendation provides governments with a framework to help consumers resolve disputes and settle claims with business, and covers disputes in both domestic and cross-border transactions. It is primarily aimed at third-party dispute resolution and redress mechanisms, and recognizes that consumer disputes can often be resolved directly by the relevant business and that consumers and businesses should first attempt to resolve their disputes directly before seeking recourse through third-party mechanisms. It contains guidance on domestic frameworks for CDR and cross-border consumer disputes. It also addresses guidance on private sector cooperation, on mechanisms for collecting consumer complaints and analyzing market trends, and on education and awareness. The Recommendation was a main source of inspiration for the revision of the United Nations Guidelines of 2015.

2.3 The Hague Convention of Private International Law

The Hague Convention of Private International Law (HCCH) adopted two of the most important private international law instruments of jurisdiction and choice of law in international contracts, namely the HCCH Convention of 30 June 2005 on Choice of Court Agreements (2005 Choice of Court Convention)³² and the 2015 Hague Principles on Choice of Law in International Commercial Contracts (2015 HCCH Principles).³³

As previously mentioned, those two instruments “explicitly exclude consumer matters from their operation, with the reason that consumers, who are disadvantaged parties in their contractual transactions, require specific or detailed consideration.”³⁴

Recently, consumer protection was included in the HCCH Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or

Commercial Matters (2019 Judgments Convention).³⁵ HCCH declared that the 2019 judgments Convention permits consumer-related judgments to circulate, and certain degree of consumer protection is also included by adding a filter (Article 5(1)) that may be applied to judgments sought against consumers.

A proposal for a HCCH convention on cooperation for dispute resolution related to consumer tourists was included in the Conference Agenda in 2012.³⁶ The proposal initially aimed to provide a treaty to enhanced access to justice to international tourist consumers through improved cooperation among consumer protection agencies and the judiciary. The Chair of the HCCH Experts’ Group on the Tourists and Visitors (ODR) Project of 1 February 2021 noted that it would not be necessary for the experts to examine the merits of a binding versus a non-binding instrument, as it had been decided to proceed with a non-binding instrument. The Expert Group concluded that the development of a “Guide” may provide useful assistance to tourists and visitors in pursuing claims.³⁷

2.4 UNCITRAL Technical Notes on Online Dispute Resolution

In 2016, the United Nations Commission on International Trade Law³⁸ formally adopted its Technical Notes on Online Dispute Resolution³⁹, a non-binding, descriptive instrument, which included consumer disputes, and aim “to assist States, in particular developing countries and States whose economies are in transition, ODR administrators, ODR platforms⁴⁰, neutrals, and the parties to

³² See: <https://www.hcch.net/en/instruments/conventions/full-text/?cid=98>

³³ See: <https://www.hcch.net/en/instruments/conventions/full-text/?cid=135>

³⁴ See: [cicplp4_Cont_HCCH.pdf](#) (unctad.org), Contribution (HCCH) to IGE on consumer private international law, 2019.

³⁵ See: <https://www.hcch.net/de/instruments/conventions/full-text/?cid=137>

³⁶ See: <https://www.hcch.net/en/projects/legislative-projects/protection-of-tourists>

³⁷ Available at: <https://assets.hcch.net/docs/588a7d85-37e8-4fe5-bfa8-8e914b6f9ecc.pdf>

³⁸ See: <https://uncitral.un.org/>

³⁹ Available at: https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/v1700382_english_technical_notes_on_odr.pdf

⁴⁰ ODR platform refers to any system which uses “technology to enable a dispute resolution process”, including “generating, sending, receiving, storing, exchanging or otherwise processing communications in a manner that ensures data security.” Neutral refers to “An individual that assists the parties in settling or resolving the dispute.” UNCITRAL (2016), available at: https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/v1700382_english_technical_notes_on_odr.pdf

ODR proceedings in developing and using ODR systems.”⁴¹

The document states that ODR should be based on the principles of impartiality, independence, efficiency, effectiveness, due process, fairness, accountability, and transparency. The Notes include three settlement stages: negotiation, facilitated settlement, and a decision by a third party. In addition, it states that ODR “process may be implemented differently by different administrators of the process and may evolve over time.”⁴²

2.5 The European Union consumer legal system

Consumer access to justice and redress has been at the core of the European project. The 1975 preliminary programme of the European Economic Community for a consumer protection and information policy, with regard to redress, stated as follows: “Consumers should receive advice and help in respect of complaints and of injury or damage resulting from purchase or use of defective goods or unsatisfactory services. Consumers are also entitled to proper redress for such injury or damage by means of swift, effective, and inexpensive procedures.”⁴³ This was recently emphasized in the New Consumer Agenda,⁴⁴ adopted in November 2020 and containing a vision until 2025: “facilitating individual

redress will remain a priority with continued European Union funding and modernisation of European Consumer Centres, Alternative Dispute Resolution and Online Dispute Resolution tools.” In contrast to the absence of a systematic legal framework at global level, the European Union has been developing, at the regional level, a comprehensive legal framework that specifies minimum-level protection and dispute resolution for consumers, including in cross-border cases, while leaving considerable policy space to its Member States. In this sense, the legal system for consumer protection in the European Union provides a good reference for the development of any regional or global initiative.

In the European Union, the consumer protection legal system includes substantive consumer law, procedure laws and private international law. European Union substantive laws, as discussed below, only apply to cases where both business and consumer are based within the European Union but not if one or both of the parties are outside of it. For details on how the legal framework is applied in practice in the context of Europe-wide regional CDR, such as the European Union ODR Platform and ECC Net, see Sections 3.9 and 4.4.

2.5.1 Substantive law on consumer protection

Substantive law is a set of laws that define the rights and obligations of the parties governed by the law. In the European Union, substantive laws on consumer protection take mostly the form of Directives, which set out the common goals that all Member States must achieve and allow individual countries to devise their own laws on how to reach those goals.⁴⁵ This means that a national act of transposition is necessary for a Directive to take effect, even though Consumer protection directives tend to promote maximum harmonisation towards an uniform set of rules applicable to the whole European Union. However, since consumer protection issues are a shared competence between the European Union and its Member States (article 169 of the Treaty on the

⁴¹ See: <https://uncitral.un.org/en/texts/onlinedispute>

⁴² In this context, facilitated settlement refers to the second stage of an ODR proceedings, “whereby a neutral is appointed and communicates with the parties to try to achieve a settlement.” The ODR administrator may appoint a neutral and notify the parties of that appointment and provide certain details about the identity of the neutral. The neutral may then “communicate with the parties to try to achieve a settlement.” “If a facilitated settlement cannot be achieved within a reasonable period of time, the process may move to a final stage.” UNICITRAL (2016). Available at: https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/v1700382_english_technical_notes_on_odr.pdf

⁴³ European Economic Community, 1975, Preliminary programme of the European Economic Community for a consumer protection and information policy, 25 April, available at: [eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=C ELEX:31975Y0425\(01\)#:-:text=COUNCIL RESOLUTION of 14 April 1975 on to the Treaty European Economic Community%3B establishing the](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=C ELEX:31975Y0425(01)#:-:text=COUNCIL RESOLUTION of 14 April 1975 on to the Treaty European Economic Community%3B establishing the)

⁴⁴ European Union, 2020, Communication from the Commission to the European Parliament and the Council New Consumer Agenda Strengthening consumer resilience for sustainable recovery, 13 November, available at: [IMMC.COM%282020%29696%20final.ENG.xhtml.2_EN_ACT_part1_v6.docx](https://www.immc.com/282020%29696%20final.ENG.xhtml.2_EN_ACT_part1_v6.docx) (europa.eu)

⁴⁵ European Union, 2023, types of legislation, available at: https://european-union.europa.eu/institutions-law-budget/law/types-legislation_en#:~:text=A%20%22directive%22%20is%20a%20legislative,how%20to%20reach%20these%20goals.

Functioning of the European Union), these leads to coexisting legal regimes among Member States.

The foundational European instrument to confer general consumer rights in a comprehensive manner was the Directive on Consumer Rights (Directive 2011/83/EU)⁴⁶ and its amendment, the 2019 Omnibus Directive (Directive (EU) 2019/2161).⁴⁷ The Directive applies to contracts concluded in shops and contracts concluded off-premises (for example, in consumer's home) or at a distance (for example, online). It covers a broad range of contracts concluded between business and consumers for sales contracts and services contracts, contracts for online digital content and contracts for the supply of water, gas, electricity, and district heating. However, healthcare, social services and financial services are not included. The 2019 amendment included digital service or digital content contracts and personal data.⁴⁸ Two other important directives on consumer protection are the Unfair Contract Terms in the Consumer Contracts Directive (93/13/EEC)⁴⁹ and its amendment in the 2019 Omnibus Directive (Directive (EU) 2019/2161),⁵⁰ and the Directive on Unfair Commercial Practices (Directive 2005/29/EC)⁵¹ and its amendment in the 2019 Omnibus Directive (Directive (EU) 2019/2161).⁵² The substantive laws also cover other areas of consumer protection such as advertisement and pricing.

2.5.2 Procedural law on CDR

Procedural law is a set of laws that prescribe the procedures for and approaches to enforcing substantive law. European legal instruments in this field take the form of directives, as explained above, and regulations, which are directly binding across the European Union and do not require any act of

transposition.⁵³ The procedural laws for consumer protection⁵⁴ include the Regulation on Small Claims Procedure ((EC) No 861/2007),⁵⁵ the Directive on Consumer ADR (Directive 2013/11/EU)⁵⁶ and Regulation 524/2013 on consumer ODR (both of which are discussed in Section 3.9), the Directive on Mediation (Directive 2008/52/EC),⁵⁷ the Directive on Action for Damages (Directive 2014/104/EU),⁵⁸ the Directive on Injunctions (Directive 2009/22/EC),⁵⁹ and the Directive on Representative Actions for the Protection of the Collective Interests of Consumers (Directive 2020/1828 /EU).⁶⁰

2.5.3 Private international law (or conflict of laws)

When a legal dispute has an international element, private international law (or conflict of laws) rules typically apply. Private international law (or conflict of laws) is a set of rules of law that determine which court has jurisdiction and which law governs a given legal dispute. It also determines whether, and if so under what conditions, a judgment rendered by a foreign court will be recognized and enforced domestically.⁶¹

Although no global model law exists for cross border consumer disputes, there is a set of unified applicable rules in private international law for civil and commercial matters within the European Union: Regulation Rome I to contractual obligation (Regulation (EC) No 593/2008)⁶², Regulation Rome II to non-contractual obligations (Regulation (EC) No 864/2007),⁶³ and the European Union Regulation on jurisdiction and the recognition and enforcement of judgments in civil

⁴⁶ See: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32011L0083>

⁴⁷ See: <https://eur-lex.europa.eu/eli/dir/2019/2161/oj>

⁴⁸ See: <https://eur-lex.europa.eu/EN/legal-content/summary/consumer-information-right-of-withdrawal-and-other-consumer-rights.html#:~:text=Directive%202011%2F83%2FEU%20aims,particularly%20for%20consumers%20buying%20online>

⁴⁹ See: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31993L0013>

⁵⁰ See: <https://eur-lex.europa.eu/eli/dir/2019/2161/oj>

⁵¹ See: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32005L0029>

⁵² See: <https://eur-lex.europa.eu/eli/dir/2019/2161/oj>

⁵³ Op. cit. 35.

⁵⁴ See: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=LEGISUM:090402_1

⁵⁵ See : EUR-Lex - I16028 - EN - EUR-Lex (europa.eu)

⁵⁶ See : EUR-Lex - 32013L0011 - EN - EUR-Lex (europa.eu)

⁵⁷ See : EUR-Lex - I33251 - EN - EUR-Lex (europa.eu)

⁵⁸ See : EUR-Lex - 32014L0104 - EN - EUR-Lex (europa.eu)

⁵⁹ See: Directive 2009/22/EC of the European Parliament and of the Council of 23 April 2009 on injunctions for the protection of consumers' interests (Codified version) (Text with EEA relevance) - Publications Office of the European Union (europa.eu)

⁶⁰ See : EUR-Lex - 32020L1828 - EN - EUR-Lex (europa.eu)

⁶¹ See: <https://www.bj.admin.ch/bj/en/home/wirtschaft/privatrecht.html>

⁶² See : EUR-Lex - 32008R0593 - EN - EUR-Lex (europa.eu)

⁶³ See : EUR-Lex - 32007R0864 - EN - EUR-Lex (europa.eu)

and commercial matters (Recast Brussels Regulation) (EU 1215/2012).⁶⁴

According to Rome I, consumer contracts “shall be governed by the law of the country where the consumer has his habitual residence.”⁶⁵ Parties’ autonomy⁶⁶ is only valid given that the consumer is not deprived by the choice of law of the protection⁶⁷ afforded to them by provisions that cannot be derogated from by agreement.⁶⁷ Rome I does not restrict the application of the overriding mandatory provisions which is crucial for safeguarding public interests of the law of the forum.⁶⁸

The Rome II applies in situations involving conflict of laws, to non-contractual obligations in civil and commercial matters. In relation to product liability, which is a non-contractual obligation arising out of a tort or delict, the applicable law is Lex loci damni,⁶⁹ which is the law of consumer’s habitual residence where the damage occurred.⁷⁰ In matters of unfair competition, the conflict-of-law rule should protect consumer⁷¹ whereby the connecting factor is the place of collective interests of consumers.⁷²

According to the Recast Brussels Regulation, the consumer, as a weaker party, should be protected by rules of jurisdiction more favourable to their interests than the general rules.⁷³ Consumers have the option to choose the court where they, or the business, are domiciled (illustrated in Section 4.4).⁷⁴ The party autonomy is also limited to determining the court when it is related to consumer contract.⁷⁵

⁶⁴ See : [EUR-Lex - 02012R1215-20150226 - EN - EUR-Lex \(europa.eu\)](#)

⁶⁵ Article 6 of the Rome I Regulation.

⁶⁶ “The parties may choose the law applicable to a contract which fulfils the requirements of paragraph 1, in accordance with Article 3. Such a choice may not, however, have the result of depriving the consumer of the protection afforded to him by provisions that cannot be derogated from by agreement by virtue of the law which, in the absence of choice, would have been applicable on the basis of paragraph 1.”

⁶⁷ Article 6 of the Rome I Regulation.

⁶⁸ Article 9 of the Rome I Regulation.

⁶⁹ Lex loci damni refers to the law of the place where the injury occurs.

⁷⁰ Article 5 of the Rome II Regulation.

⁷¹ Recitals 21 of the Rome II Regulation.

⁷² “The law applicable to a non-contractual obligation arising out of an act of unfair competition shall be the law of the country where competitive relations or the collective interests of consumers are, or are likely to be, affected.”

⁷³ Para 18: “In relation to insurance, consumer and employment contracts, the weaker party should be protected by rules of jurisdiction more favourable to his interests than the general rules.”

⁷⁴ Article 18.

⁷⁵ Para 19: “The autonomy of the parties to a contract, other than an insurance, consumer or employment contract, where only limited autonomy to determine the courts having jurisdiction is allowed, should be respected subject to the exclusive grounds of jurisdiction laid down in this Regulation.”

3. CASE STUDIES: NATIONAL AND REGIONAL CDR

This chapter examines various approaches to organizing, operating, and coordinating CDR across countries and regions. A range of factors can advance or inhibit the success and effectiveness of CDR. These include, among others, frameworks – policy, legal and regulatory, and institutions – for consumer protection and CDR; CDR design principles, criteria, and requirements; CDR organizational structure and institutional practices; development of digital infrastructure and emerging technologies; geographical and cultural influences on consumer protection and consumer welfare; and provision of information, education, and awareness.⁷⁶

In this chapter, CDR examples are drawn from Brazil, China, Colombia, Mexico, the Netherlands, Portugal, and the United Kingdom (Sections 3.2 to 3.8). These countries were chosen largely due to the well-established and unique natures of their CDR systems, as substantiated by the literature. Other due considerations were based on the practicality and constraints around the scope and length of this study, geographical representativeness, and striking a balance in including CDR systems from both developing and developed economies.

The CDR system of the European Union is, at present, the only regional CDR platform and system in the world that functions as more than just a dispute or complaints channelling portal. Other regional or cross-border CDR systems that are currently under development or have been launched recently include ASEAN, and MERCOSUR. UNCTAD has also been implementing a technical cooperation project on online dispute resolution for consumers (DODR Project).⁷⁷ As neither are yet functional nor launched too recently to be properly investigated, they are excluded in this report.

While only a handful of countries are included in this chapter, several common themes are evident across CDR systems. A non-exhaustive list of these includes organizational status;⁷⁸ operational impartiality, transparency, and/or independence;⁷⁹ sources of funding; method of self-sustaining financially; coverage of economic sectors; institutional structure; personnel expertise; case-handling procedures; legal status of decision; enforcement of decision; cross-border case handling mechanism.⁸⁰

3.1 Brazil

As one of the largest B2C e-commerce markets in the Latin America and the Caribbean (LAC) region, Brazil was ranked among the top 10 developing economies in business-to-consumer e-commerce in Latin America in 2020 by UNCTAD.⁸¹

Faced with a growing number of consumer disputes online in recent years while recognizing the need for more efficient and effective avenues for dispute settlement early in the process, Brazil's National Consumer Secretariat (SENACON) of the Ministry of Justice launched consumidor.gov.br in June 2014. The legal basis for the creation of this platform relates to the Presidential Decree Legislation 8573 and 10197 (SENACON 2021: Interview), the provisions of Article 4 item V of Law 8.078/1990 and Article 7, items I, II and III of Decree 7.963/2013 ([Consumidor.gov.br](http://consumidor.gov.br)).⁸²

National CDR platform: [Consumidor.gov.br](http://consumidor.gov.br)

As a public-funded service which is free of charge to consumers and businesses, Brazil's national ODR platform, www.consumidor.gov.br, provides a digital channel for Brazilian consumers and businesses to

⁷⁶ For more details on good design criteria for an effective national CDR system, see the note on 'A model for a national consumer ADR architecture.' (2012). Available at: https://www.law.ox.ac.uk/sites/files/oxlaw/-_a_model_for_a_national_consumer_adr_architecture.pdf

⁷⁷ The project, entitled 'Delivering digital trading infrastructure and online dispute resolution for consumers as means to improve international trade and electronic commerce', supports cross-border trade through the design and implementation of CDR platform, using blockchain and other technologies, for consumers in Indonesia and Thailand.

⁷⁸ Whether it is government-operated or government-backed, or whether it is privately operated but non-for-profit or privately operated and for-profit (or commercial).

⁷⁹ Article 37 of the UNGCP (2015) states that CDR mechanism should be transparent and impartial.

⁸⁰ To the extent that such data is accessible and available.

⁸¹ UNCTAD B2C E-commerce Index (2020: 7-8).

⁸² Subsequently in 2015, the acceptability and usage of CDR as a form of mediation were enhanced and amplified by the New Civil Process Code (Lei 13.105/2015) and the Law of Mediation (Lei 13,140/2015). See Fernandes et al (2018).

attempt dispute resolution through direct dialogue. It is not a full-fledged platform in the sense that the authorities do not intervene in the substantive matters during online negotiation, nor do they provide other CDR services such as online mediation or adjudication.⁸³

With a staff of 15 civil servants, including five experts, operating Consumidor.gov.br, SENACON is responsible for the management, maintenance, and monitoring (for systemic market problems) of the online platform. SENACON is also supported by several other government bodies in the operation of the online platform, including the Consumer Protection Foundation (PROCONS), Public Defender's Offices, and various Public Ministries as well as the civil society.

The online platform is not an administrative procedure but an alternative to various existing traditional dispute resolution services provided by the State and Municipal PROCONS, the Public Defender's Office, the Public Prosecution Service, and the Special Civil Courts. Therefore, Consumidor.gov.br operates in parallel with these services so that different choices remain at the consumer's disposal. In the cases of the PROCONS and small claims court, the online platform partners with them to allow for more seamless transferring and processing of cases between agencies. The PROCONS, in particular, deal with a large number of consumer dispute claims through CDR mediation services in around 6,000 municipalities across the country, though these are handled by less than 1,000 local and regional consumer protection authorities.

Consumidor.gov.br is primarily intended for businesses in regulated or essential sectors, such as water, energy, and telecommunications, as well as those sectors with high transaction volumes. Participation in the platform is mandatory for businesses that have a large market share but voluntary for others. The business is required to sign an agreement and register on the platform formally before using it. The platform is limited to consumers and businesses in Brazil and does not provide for cross-border dispute resolution (SENACON 2021: Interview).

Upon a complaint registered by a consumer, the business has up to 10 days to respond. Upon receiving

a response from the business, the consumer has up to 20 days to accept or reject the proposed solution and rate the business's response and interaction. If a complaint is closed without reaching an agreement or if the consumer is unsatisfied with the interaction, they can seek further support from the aforementioned traditional dispute resolution channels, within the framework of the National Consumer Defence System (Consumidor.gov.br 2021; SENACON 2021: Interview).

The data collected from the disputes by the platform feed into a public database. These include information such as the type of resolution reached, the speed of resolution and the consumer satisfaction rate in the business's handling of their complaints. Such platform performance indicators are in turn compiled as a ranking of the registered businesses, which are published on the platform's website for the consumers to consider before they engage with a business. This feature of platform transparency helps to strengthen consumer rights protection by encouraging competition among businesses; it incentivizes businesses to increase the quality of their goods, services, and customer service as well as improve their policies and consumer relations.

SENACON is currently working on using the data collected and analyzed by the platform in real time to compile annual reports. As of April 2021, the platform has processed more than 4 million complaints, with close to 3 million users and around 1,000 registered businesses. Around 80 per cent of these 4 million complaints were successfully resolved directly between the business and the consumer, and it took on average seven days to reach resolution. Around 8 per cent of all cases were not solved or cancelled. Considering that a small claims lawsuit costs around Brazilian Real BRL 1,000 to settle, these platform statistics show that Consumidor.gov.br would have saved around BRL 3 billion in court costs for both consumers and businesses since its implementation in 2014 (SENACON 2021: Interview).

3.2 China

Ranked at 10th place on UNCTAD's B2C E-commerce Index (2020), China (including Hong Kong SAR) accounts for over a quarter of global B2C transactions. China became the world's largest B2C cross-border e-commerce in 2018, with imports and exports

⁸³ SENACON (2021): Interview. Also see, Schmidt-Kessen MJ, Nogueira R and Cantero M (2019). 'Success or Failure? - Effectiveness of Consumer ODR Platforms in Brazil and in the EU.' Copenhagen Business School Law Research Paper Series No. 19-17.

growing at around 30 per cent year on year, reaching over US\$ 260 billion in 2020 (People.cn 2021: July 13). China's high sales volumes and levels of innovation make it a world leading e-commerce.⁸⁴

The rapid growth and maturity of China's e-commerce has been accompanied by a surge in consumer disputes. To address the demand for effective and efficient CDR, China created and launched a national ODR platform in March 2017. As an extension of China's existing national telephone hotline, known as 12315, this CDR platform is derived from China's CDR legal framework, the Consumer Rights Protection Law of China adopted in 1993 and revised in 2013 (SAMR 2019).⁸⁵

3.2.1 National CDR platform: 12315

China's national CDR platform, www.12315.cn, provides a single access point for raising consumer complaints and disputes. It is available free of charge to consumers 24 hours a day. In addition to consumer disputes and among other sectors, it covers product quality, food, drugs, pricing, intellectual property, advertisement, and fraud but excludes financial and medical sectors.⁸⁶ Built and managed by the State Administration for Market Regulation (SAMR), the platform is operated by 92,000 employees at all levels of the market regulation department.

The interactive platform is designed to generate automated responses to consumer queries. The consumer can select the company they wish to complain about or identify its geographical location on a digital map. The system automatically matches the business to its jurisdictional authority for dispute handling.

Running in parallel to the CDR platform, regional 12315 services are still available to consumers by telephone, fax, and in-person. These cases get registered in the

platform by one of 5225 responders based at 286 local centres, with standardized handling. (SAMR 2021: April 30)

Once the regional 12315 personnel receive a case, they first decide, within seven days, whether to accept the case based on their competency and jurisdiction. This depends on the type of dispute and whether the consumer has provided the requisite information and documentation. If the case is accepted, 12315 encourages the business to proactively negotiate and resolve the dispute with the consumer, which saves all parties costs, efforts, and time (SAMR 2020: November 16). If needed, 12315 can carry out third party administration mediation based on the law. If an agreement is reached at the end of mediation, the outcome is binding for the business. If no agreement is reached or if the consumer does not accept 12315's advice, the consumer reserves the right to bring the case before an arbitration hearing or court.

In 2021, the platform handled 23.81 million disputes against 3,846,900 businesses, and helped consumers recover RMB 5.5 billion in economic losses (SAMR 2022: Survey).

3.2.2 China Consumers Association

In addition to 12315, consumers in China can file complaints by telephone, in writing or in person to their local consumer associations where businesses are registered. . Once the complaint is accepted, the local consumer association enters the relevant information into one of two internal, CCA-established case management and complaint handling systems.⁸⁷ The first system is the Complaint and Consultation Information System. It is used by the staff of consumer associations for inter-agency case transfer, case handling and outcome recording, and other relevant functions. The second system is the E-commerce Consumer Rights Protection System, which provides a speedy dispute handling process for major domestic e-commerce platforms that are registered in the System. In addition to prompting e-commerce platform to address consumer complaints, the System also provides third-party mediation in situations where the parties cannot reach an agreement.

⁸⁴ Available at: <https://www.jpmorgan.com/content/dam/jpm/treasury-services/documents/global-e-commerce-trends-report.pdf>

⁸⁵ The Law was adopted on October 31, 1993, with its first amendment adopted on August 27, 2009, and its second amendment and the current version adopted on 25 October 2013.

⁸⁶ The financial sector is developing a separate CDR platform, in collaboration with the Government and the Supreme People's Court, that will be used deal specifically with banking and insurance disputes. The platform is scheduled to be launched soon (CBIRC 2021: 7 September).

⁸⁷ Consumers cannot directly submit complaints online into these systems as they do not provide public access.

3.2.3 Other CDR systems: Business in-house services and Internet courts

The volume of complaints handled by the 12315 platform and consumer associations pale in comparison to in-house business CDR systems. The latter include e-commerce platforms such as JD.com and Taobao, and third-party e-payment systems such as Alipay and Wechat Pay. In the case of Alipay, it acts as a third-party intermediary that provides guarantee for transaction. Funds from consumer's payment is only released to the seller upon successful fulfilment of transaction.

In recent years, three internet courts have been established in Hangzhou⁸⁸, Beijing⁸⁹ and Guangzhou⁹⁰ to resolve disputes arising from online sales, service contract, online loans, and intellectual property. Some of these courts have implemented artificial intelligence (AI; case triaging) and blockchain (data storage and management).⁹¹ Another area of advancement in the field of internet courts is the development of mobile apps, which aims to reduce the complexity of e-litigation processes and increase efficiency. These include the 'mobile micro court' app launched in January 2018 (Shi, Sourdin and Li 2021), and the 'China Mobile MiniCourt' national mobile app launched by the Supreme Court of China in August 2018 (China Justice Observer 2021: March 14). These examples illustrate how emerging technologies are being used in judicial CDR and how litigation option in CDR can be user-friendly.

3.3 Colombia

As a backdrop to the growing demand for effective CDR platform in the country, Colombia has the third-largest e-commerce market in Latin America, according to Statista.⁹² Colombia saw a revenue of US\$ 7 billion in 2021,⁹³ and its e-commerce

is estimated to be growing at an annual rate of 6 per cent between 2021 and 2025, on par with the global average. In 2021, 40 per cent of the Colombian population have made at least one online purchase, which amounts to roughly 25 million online buyers.

The national consumer protection authority of Colombia, the Superintendence of Industry and Commerce (SIC), provides a national CDR platform known as SIC-Facilita.⁹⁴ This government operated CDR scheme derives its legal basis from Law 1480 of 2011,⁹⁵ Laws 1341 and 1369 of 2009,⁹⁶ and Law 1266 of 2008.⁹⁷

Established in 2015, the platform provides a forum where the SIC acts as a facilitator or mediator to help consumers and businesses resolve disputes through facilitated negotiation. It is free of charge to use for consumer and business, and business participation is voluntary.

SIC-Facilita covers more than 20 economic sectors⁹⁸ and has jurisdiction over disputes related to guarantees, promotion and offers, misleading advertising, and distance sales, as well as disputes related to telecommunications services⁹⁹ and personal data protection issues.¹⁰⁰ Between 2015 and 2021, SIC-Facilita processed almost 230,000 disputes, of which 65 per cent have resolved through mutual agreement with an average of 15 days. By 2021, the platform has more than 150 registered companies and 250,000 registered consumers. These impressive statistical figures show the popularity, speed, and effectiveness of the platform.¹⁰¹

In terms of the general procedure, the voluntarily registered businesses are required to respond within seven days upon receiving the dispute

⁸⁸ See: <https://www.netcourt.gov.cn/?lang=En>

⁸⁹ See: <https://english.bjinternetcourt.gov.cn/>

⁹⁰ See: <https://ols.gzinternetcourt.gov.cn/?lang=en-US>

⁹¹ The Second International Cyberspace Governance Forum (2022), 10 June, Beihang University and Beijing Normal University, China: presentation by judge from the Beijing Internet Court.

⁹² See: https://www.statista.com/topics/6005/e-commerce-in-colombia/#topicHeader__wrapper

⁹³ See: <https://ecommercedb.com/en/markets/co/all>

⁹⁴ See: <https://sicfacilita.sic.gov.co/SICFacilita/index.xhtml>

⁹⁵ Consumer Statute.

⁹⁶ Regarding the protection of users of communications and postal services.

⁹⁷ Regarding the protection of users that consider that their data have been improperly processed concerning the violation of their rights of habeas data.

⁹⁸ The sectors that receive most complaints about are technology and telecommunications (SIC-Facilita Management Report 2015-2021).

⁹⁹ Fixed telephony, mobile telephony, internet, and television.

¹⁰⁰ SIC (2021): Interview; SIC (2021): Survey; SIC (2022): Survey.

¹⁰¹ SIC-Facilita Management Report 2015-2021.

filed by consumer. If no agreement is reached, the platform automatically proceed to schedule a meeting between the disputing parties, with the medication of the SIC, in order to resolve their conflict in a real time online chat session. The chat is limited to 45 minutes and is facilitated by the SIC. The entire CDR process from beginning to end takes 15 working days on average.¹⁰²

Three outcomes may result from the process: 1) mutual agreement reached before and without online chat; 2) dispute resolved after online chat; 3) no agreement is reached or non-attendance by either or both parties. In the first two scenarios where agreement is reached, the agreement is stemmed from the parties and not the SIC as the latter takes a non-involved, neutral position throughout the process. The agreement reached automatically becomes binding as a transaction contract which has the effect of *res judicata*, which means that if the business does not comply with the agreement, the consumer may bring it before the court to enforce the agreement or inform the SIC who may impose penalty fines on the business.¹⁰³

The above shows some potential drawbacks that may undermine the effectiveness of SIC-Facilita. For example, online chat makes the interaction rather impersonal, as some consumers may prefer to be visually connected with the business representative in working to resolve dispute, especially when there is a deadlock. This is where mediation hearing, online or offline, can prove beneficial.

While SIC-Facilita experienced much higher volumes of dispute claims in 2020 due to COVID-19 compared to previous years,¹⁰⁴ it helped consumers by removing the need to travel, queue and wait long periods through its remote, nation-wide operations. This helps the government save on human and financial resources in dealing with disputes, which in turn eases budget constraints. Nevertheless, SIC-Facilita is working on overcoming challenges, including those related to the pandemic. Such efforts focus on increasing access to internet and the platform in remote rural regions through the

National Program of Universal Access (MINTEC), and harmonizing work to strengthen cooperation with other national authorities.¹⁰⁵ The platform aims to make its system interoperable with the biggest companies operating in Colombia and integrate its operations with the Chamber of Commerce.¹⁰⁶

By promoting a culture of better consumer care and customer service, the platform decreases the pressure on the legal system and the costs consumers face in raising legal disputes. For instance, the SIC recently implemented a satisfaction ratings system for businesses and consumers, in addition to publishing data on complaint rates ranked by businesses. The SIC also undertakes education and awareness-raising campaigns via a program known as SICTeVe, which organizes outreach events and communications online and in-person, to increase public trust and reduce biases and misperceptions about SIC-Facilita. Moreover, the SIC aims to improve the platform's usability for vulnerable populations such as people with visual and auditory impairments as well as senior citizens.¹⁰⁷

Although SIC-Facilita currently does not provide cross-border CDR services, Colombia's legal and regulatory framework upon which the national CDR platform operates provides sufficient legal basis to allow it to handle cross-border disputes filed by consumers based abroad in the future. This requires that the dispute concern a Colombia-based business, or an e-commerce business registered in SIC-Facilita – and that the consumer filing the claim can provide evidence of their foreign national identity card.¹⁰⁸

3.4 Mexico

Although only 39 per cent of Mexican citizens have made an online purchase in 2020, Mexico's B2C e-commerce has expanded by over 20 per cent each year since 2017, reaching nearly US\$ 39 billion in

¹⁰²SIC (2021): Interview; SIC (2021): Survey; SIC (2022): Survey.

¹⁰³ Based on paragraph 11, Article 58, Law 1480 of 2011 and Article 2483 of the Civil Code.

¹⁰⁴ Around five to seven times more dispute claims in the summer of 2020 compared to the same period in 2019. See: <https://sicfacilita.sic.gov.co/SICFacilita/index.xhtml>

¹⁰⁵ UNCTAD DODR Workshop (2022): SIC. See: https://www.canva.com/design/DAE7AGWjNBQ/dw4-bRV5FCyQA-afLBim1Qw/view?utm_content=DAE7AGWjNBQ&utm_campaign=designshare&utm_medium=link&utm_source=viewer

¹⁰⁶ SIC (2022): Survey.

¹⁰⁷ SIC (2021): Interview; SIC (2021): Survey; SIC (2022): Survey.

¹⁰⁸SIC (2021): Survey.

2020.¹⁰⁹ It is expected to continue on this trajectory in the coming years as it catches up with seasoned online shopping nations. With a predominantly mobile centric B2C e-commerce,¹¹⁰ Mexico can further seize opportunities for e-commerce growth by addressing ongoing gaps in its infrastructure fundamentals. For example, 66 per cent of Mexican online consumers have made a purchase from abroad, while cross-border shopping account for 15 per cent of Mexico's overall e-commerce (ibid.).

3.4.1 National CDR platform: Concilianet

The Federal Consumer Prosecutor's Office of Mexico, Procuraduría Federal del Consumidor (PROFECO), established a national CDR platform in 2008¹¹¹ known as Concilianet.¹¹²

This government-operated CDR scheme is primarily based upon the main Federal Consumer Protection Law, which is focused on ADR and not necessarily ODR (UNCTAD DODR Workshop 2021: PROFECO). Divided into four sections, the first section of the Federal Consumer Protection Law specifies CDR services and procedures provided by PROFECO; section two states conciliation procedures offline and via Concilianet;¹¹³ section three covers arbitration; section four covers legal procedures for non-compliance.¹¹⁴

Concilianet allows consumer and business to resolve dispute through PROFECO-supervised negotiation known as 'Pre-conciliation.' If the dispute is not resolved informally at this preliminary

stage, the parties may move to the formal phase of conciliation hearing, which can be conducted through the platform. In addition, the platform has a 'Group Conciliation' procedure which allows businesses such as airline operators to deal with multiple individual disputes of a similar nature together. Based on its features, Concilianet may be considered a full-fledged CDR platform. It is free of charge to use for consumer and business, and business participation is voluntary through registration in a cooperative agreement (PROFECO 2021: Interview).¹¹⁵

As part of PROFECO, Concilianet covers a range of sectors including telecommunications,¹¹⁶ certain utilities,¹¹⁷ retail, travel on air and land, wholesale, certain food services, real estate, pawn shops, parcel services, and car sales. It has jurisdiction over product safety, advertising and commercial behaviour and products and services, e-commerce terms and conditions, consumer education, and ADR and ODR. Excluded from the jurisdiction of PROFECO and Concilianet are the financial and banking services and professional services sectors, such as medical services, which have their own CDR scheme, as well as matters related to privacy protection and competition.

In 2020, Concilianet processed 11,820 disputes with a high rate of resolution of nearly 88 per cent, which shows its effectiveness. Consequently, the CDR service helped consumers recover more than US\$ 1.7 million. One of the main hurdles that prevent wider uptake of Concilianet's services is business participation rates. To tackle this, PROFECO is actively engaging with businesses through various communication channels to increase participation and formalize cooperation agreements (PROFECO 2021: Survey). These include face to face meetings and publicity through consumer magazines to convey how the provision of accessible and effective CDR helps business to save on costs.

¹⁰⁹ Such as strong bank account penetration, fast and widespread internet coverage, and comprehensive delivery logistics. Available at: <https://www.jpmorgan.com/content/dam/jpm/treasury-services/documents/global-e-commerce-trends-report.pdf>

¹¹⁰ 53 percent of sales are completed on a mobile device. Available at: <https://www.jpmorgan.com/content/dam/jpm/treasury-services/documents/global-e-commerce-trends-report.pdf>

¹¹¹ See: <https://www.crdp.umontreal.ca/nouvelles/2017/10/17/concilianet-9-years-of-odr-in-consumer-protection-in-mexico/>

¹¹² See: <https://concilianet.profeco.gob.mx/Concilianet/inicio.jsp>

¹¹³ Based on Articles 111 to 116, including arbitration procedure that should follow if the parties fail to reach an agreement (discussed later).

¹¹⁴ Available at: <https://www.diputados.gob.mx/LeyesBiblio/pdf/LFPC.pdf>

¹¹⁵ This complies with Article 104 of the Federal Consumer Protection Law. Available at: www.profeco.gob.mx/juridico/pdf/l_fpc_06062006_ingles.pdf

¹¹⁶ The telecommunications sector has a CDR platform (and phone conciliation programme) in addition to Concilianet, but that platform does not provide 'Pre-conciliation' service (UNCTAD DODR Workshop 2021: PROFECO; PROFECO 2021: Interview).

¹¹⁷ Electricity, gas, and fossil fuel.

In terms of the general procedure, once PROFECO receives the dispute from consumer through Concilianet, it has 10 working days to decide whether it is competent to accept the case and proceed. If accepted, PROFECO arranges a date for online mediation or conciliation hearing with the parties. When the conciliation process is completed, the consumer receives a satisfaction survey online to rate their experience. The average time to resolution is roughly 90 days.

Two outcomes, both of which are considered formal and legally binding on the parties, may result from the process. In the first scenario where the parties reach mutual agreement, the terms of the agreement are recorded in writing (*res judicata*) and to be fulfilled by the business. If the business does not comply with the agreement, PROFECO may carry out administrative sanctions to enforce the agreement. PROFECO also publishes a list of businesses with the highest number of non-conformities¹¹⁸ ranked by number of consumer complaints to encourage CDR use and discourage non-compliance.¹¹⁹ In the second scenario where no agreement is reached, the consumer may bring the matter to another competent authority or before the courts but not to another PROFECO delegation.¹²⁰ This helps to prevent duplication of dispute filings, wasting resources and inconsistency in outcomes.

In addition to engaging businesses, PROFECO also conducts consumer satisfaction surveys to ensure that they provide quality, efficient and effective services, including Concilianet. In 2020, 71 per cent of those surveyed found the services useful while 79 per cent found the services to be 'good.' To promote a culture of responsible and intelligent consumption, PROFECO also carries out consumer education, training, and awareness campaigns by disseminating information through multiple digital channels, including outreach to consumer organizations.¹²¹

¹¹⁸ See: <https://burocomercial.profeco.gob.mx/>

¹¹⁹ PROFECO (2020). PROFECO Annual Report 2020. See: <https://concilianet.profeco.gob.mx/Concilianet/inicio.jsp>

¹²⁰ Which is an in-person CDR option at a local PROFECO office.

¹²¹ Such as "PROFECO's Consumer Magazine, television, radio, internet, electronic media, and social networks (YouTube, Twitter, Facebook, Instagram). PROFECO encourages consumer organizations to develop self-management schemes and active participation of their members, so that

3.4.2 Arbitration and cross-border CDR services

As section three of the main Federal Consumer Protection Law states, arbitration is an alternative option to Concilianet for consumers. When business and consumer reach a deadlock in seeking to resolve dispute, they can voluntarily submit request for arbitration by PROFECO. In such cases, PROFECO acts as the arbitrator and provide decisions that is based on fairness. In 2020, PROFECO concluded 11 arbitration cases and helped consumers recover more than US\$ 20,000 in financial losses.

This 'stepped' or 'tiered' approach to organizing different levels of CDR schemes offers consumers another option to escalate their case, so that they can break the impasse and obtain redress and justice.

The Department of Conciliation Services for Foreign Residents (CARE) at PROFECO provides conciliation services and assistance for cross-border consumer disputes free of charge. Consumers who have purchased goods or services from a business based in Mexico, regardless of the consumer's nationality, are eligible to use the services provided by CARE.¹²²

The consumer is first required to submit complete documentation with respect to the dispute by email or post to PROFECO.¹²³ Once the case is accepted, PROFECO arranges by email with the parties to conduct a conciliation by telephone. The conciliation procedure is based upon Mexican law and not the consumer's domicile. In certain cases, private international law may be applied.¹²⁴

they know and learn to defend their rights and interests on their own (PROFECO Annual Report 2020).

¹²² See: <https://consulmex.sre.gob.mx/montreal/index.php/en/foreigners/services-foreigners/318-consumer-protection> and <https://www.gob.mx/profeco/documentos/conciliacion-from-abroad?state=published>

¹²³ In accordance with Article 99 of the Federal Consumer Protection Law. Also, CARE is not technologically linked or interoperable with any other CDR platforms domestically or abroad.

¹²⁴ Such as the Warsaw Convention of 1929 and the Montreal Convention of 1999 when dealing with disputes related to passenger air transportation.

3.5 The Netherlands

Out of 152 countries reviewed in the latest UNCTAD Business-to-consumer e-commerce index, (UNCTAD B2C Index 2020), the Netherlands comes second with 96 per cent of individuals using the internet and 100 per cent of individuals owning a financial institution or mobile-money service provider account. Regarding CRD, in addition to individual commercial CDR bodies, there are currently four not-for-profit, government-designated CDR systems¹²⁵ with national scope known as consumer complaints boards:¹²⁶ Stichting Geschillencommissies voor Consumentenzaken¹²⁷ (DGC (N))¹²⁸, Dutch Foundation for Consumer Complaints Boards); Klachteninstituut Financiële Dienstverlening¹²⁹ (Kifid, Dutch Institute for Financial Disputes); de Stichting Klachten en Geschillen Zorgverzekeringen¹³⁰ (SKGZ, Dutch Foundation for Healthcare Insurances Complaints and Disputes); and De Huurcommissie (The Rent Tribunal).

The first one above, DGC (N), is the country's most prominent non-statutory CDR scheme.¹³¹ Established in 1970, DGC (N) has long been recognized as an advanced CDR model¹³² due to its comprehensive national scope and sectoral coverage, single consumer

entry point and full-fledged CDR platform. For these reasons, the remainder of this section focuses on the CDR scheme and avenue of the DGC (N).

The Dutch national CDR scheme and platform

At the national level, DGC (N) acts as an administrative umbrella providing full coverage for all consumer market sectors in the Netherlands¹³³. To this end, DGC (N) facilitates approximately 50 sectoral CDR boards (including e-commerce). Moreover, DGC (N) also operates 17 healthcare-focused boards.¹³⁴ Consumer disputes emerging in sectors in which no sectoral CDR board has been established, such as funeral services and aviation, are covered by DGC (N)'s National Residual Consumer Complaint Board.¹³⁵ Despite complete sectoral coverage,¹³⁶ business participation varies in the sectoral CDR boards but remain relatively low in the national residual board due to this board's fully voluntary nature (DGC (N) 2021: Interview).¹³⁷ This challenge renders full sectoral coverage less beneficial than intended.

Around 10 per cent of the DGC (N)'s operating costs are subsidized by the government (but not the regulator) to provide institutional and financial independence from the market, while the other 90 per cent comes from private sources including case fees. DGC (N) publishes its annual reports and accounts information for scrutiny by the public and independent bodies to ensure operational transparency. As primarily a self-regulatory system, the fees structure of the DGC (N)'s CDR scheme is designed to support

¹²⁵ Government's recognition of the DGC (N) provides the CDR scheme with the legitimacy they need to show that they adhere to operating standards and principles.

¹²⁶ See presentation (2021) by Eline Verhage, former representative for DGC (N): [PowerPoint-presentation \(assets-cdn.io\)](https://assets-cdn.io).

¹²⁷ See: www.degeschillencommissie.nl

¹²⁸ For the purpose of this report, the addition of 'N' after DGC (hence, DGC (N)) is used to differentiate CDR scheme in the Netherlands from the Portuguese Consumer Directorate-General, the latter of which is also known as DGC (hence, DGC (P)).

¹²⁹ See: www.kifid.nl.

¹³⁰ See: www.skgz.nl.

¹³¹ To comply with the European Union ADR Directive (2013), DGC (N) was designated as an impartial and independent entity by the Ministry of Justice and Security (DGC (N) 2021: Interview). B2B disputes are dealt with by a separate foundation within the broader structure of DGC (Stichting Geschillencommissies voor Beroep en Bedrijf, Dutch Foundation for Business Disputes Boards), which oversees 15 business ADR boards.

¹³² As highlighted by experts in various policy reports and at various international events, including the 'Study on the use of Alternative Dispute Resolution in the European Union' Final Report, submitted by Civic Consulting of the Consumer Policy Evaluation Consortium, 16 October 2009; the European Union Committee on the Internal Market and Consumer Protection, Summit on Alternative Dispute Resolution for Consumers in the Internal Market, Mar 16, 2011; and the Oxford University conference, 'The Hidden World of Con-

sumer ADR: Redress and Behaviour.' Held at the Oxford Centre for Socio-Legal Studies, 28 October 2011.

¹³³ However, commercial CDR schemes do exist and are increasing in numbers and competitiveness, especially in the healthcare sector. Some of the current commercial CDR schemes were previously established within the DGC structure, but as not all commercial CDR schemes uphold similar quality standards as the designated CDR bodies, the quality of their services may vary (DGC (N) 2021: Interview).

¹³⁴ Which are currently excluded from the scope of Directive 2013/11/EU.

¹³⁵ Such full coverage ensures that the Netherlands is fully compliant with the European Union ADR Directive (2013).

¹³⁶ Based on European Union ADR Directive (2013). For DGC (N), business can choose to participate through their membership in the trade association that has set up a sectoral consumer complaints board, or through an individual registration with a DGC (N) residual board.

¹³⁷ Low participation rates are particularly evident for sectors that commonly see high value disputes of EUR 500 or more, such as the airline sector (ACM 2021: Interview).

tripartite collaboration between the DGC (N), trade associations and consumer organizations (ibid.), and to incentivize dispute filing where it they are justified. As such, consumer pays EUR 25 to EUR 150 per case depending on the sector and board, but their payment will be refunded if their dispute is upheld. Businesses must pay EUR 25 or more per case as part of their membership in a trade association.

As of 2009, DGC (N) operates a digital workflow and case management system, allowing consumers and businesses to submit their documents and monitor their cases online. The organization's website serves as a single-entry point to this full-fledged case management system.

In 2020, DGC (N) processed almost 6000 disputes in 2020 with positive outcome in 63 per cent of all cases. The seemingly low figure for annual disputes, compared to other national CDR schemes, is a reflection of DGC's (N) entry requirement of consumer cases only being admissible if a prior attempt of the consumer to solve the matter with the business directly was unsuccessful and of the fact that, as a non-statutory CDR body, DGC (N) relies on voluntary business participation through registered membership with a trade association.

Figure 3.1 outlines the case handling procedure. It takes on average five months to resolve a dispute. For urgent matters such as utilities involving water or energy, and childcare, there is a special shortened DGC (N) procedure that takes around three weeks to complete.

Once a dispute enters the DGC (N) system, it is triaged by its secretariat and forwarded to one of the 50 sectors internally (DGC (N) 2021: Interview).¹³⁸ Parties can opt for an in-person or virtual arbitration/binding advice hearing, the latter being a recent upgrade (in 2020) aimed at better meeting consumers' needs in resolving disputes remotely and speedily during the COVID-19 pandemic (ibid). The arbitrators/binding advisors ('bindend adviseurs') usually comprise judges and (legal) experts who possess varied expertise and qualifications due to the vast range of economic and professional sectors that they cover (ACM 2021: Interview; DGC (N) 2021: Interview).¹³⁹ As a tripartite

system, the dispute resolution process at DGC (N) is carried out by a collegial CDR board of independent representatives from the judiciary, trade association, and consumer organisation(s) appointed by DGC (N), ensuring an inclusive approach and minimizing institutional bias in the outcome.¹⁴⁰

A DGC (N) procedure requires both parties to voluntarily enter into an agreement to abide by the binding advice – the CDR result – should the case reach that stage. If a business refuses to pay financial compensation based on the agreement reached, the trade association to which it belongs would be liable to compensate the consumer on the business's behalf first, after which it can deal with the non-compliant business internally. That said, disputants manage to reach a mutual agreement before the end of the procedure in around half of all cases.

3.6 Portugal

B2C e-commerce in Portugal expanded by almost a third in 2020. This landmark year in the development of online shopping in Portugal also saw 61 per cent of Portuguese having made a purchase from a foreign country.¹⁴¹

3.6.1 The Portuguese Consumer Agency

Generally, consumers in Portugal can file complaint against businesses to the Portuguese Consumer Directorate-General (DGC (P))¹⁴² as well as market authorities and sectoral regulators. As the competent authority that monitors the performance of domestic

lective problems to determine whether bigger market issues need to be addressed. For example, the ACM can bundle collective complaints against a trader to send a single request to address consumer infringement of rights or improve business practices. This includes sending enforcement requests to European Union countries where the business is based, and response from the business is mandatory as required by the European Union's Consumer Protection Cooperation (CPC) Regulation (EU) 2017/2394 (https://ec.europa.eu/info/law/law-topic/consumer-protection-law/consumer-protection-cooperation-regulation_en).

¹⁴⁰

¹⁴¹ Available at: <https://www.jpmorgan.com/content/dam/jpm/treasury-services/documents/global-e-commerce-trends-report.pdf>

¹⁴² For the purpose of this report, the addition of 'P' after DGC (P) is used to differentiate DGC Portugal from the DGC in the Netherlands, the latter of which is abbreviated as DGC (N).

¹³⁸ This AI-enabled system was piloted in 2020. Before 2020, cases were triaged manually based on the questionnaire submitted by the complainant.

¹³⁹ The Netherlands Authority for Consumers and Markets (ACM) was established in 2013 to deal primarily with col-

CDR bodies (among other duties¹⁴³), the DGC (P) also oversees and coordinates a public well-known 'Book of Complaints.' This is a "legally established citizen tool"¹⁴⁴ that all traders and services providers make available online and physical channels for consumers to file complaints (ICPEN 2022: DGC (P)).

Before consumers submit a complaint to the DGC (P), they are encouraged to resolve the complaint directly with the business, though it is not a mandatory requirement. Once they file a complaint via the Book of Complaints, market authorities (including sectoral regulators) and the DGC (P) examine it to determine whether illegal practices are involved. If so, they take the appropriate regulatory actions and sanctions based on their powers conferred by the law. If no illegality is found, market authorities and the DGC inform the consumer of the competent CDR bodies with whom they should seek help to resolve their problem.

The figure above illustrates the comprehensive national coverage of all types of consumer complaints regardless of the sectors concerned or whether they involve one-way reporting (consumer to authority) or require further substantive actions for resolution by CDR bodies. Despite the central role DGC (P) plays in Portugal's CDR landscape, it is not actually involved in the dispute handling process, only having been conferred enforcement powers in the advertising sector. For these reasons and based on its provisions to consumers, the DGC (P) does not qualify as a CDR scheme.¹⁴⁵ Therefore, instead of examining the DGC (P), the discussion below focuses on the network of designated CDR bodies that together form the bulk of the Portuguese national CDR landscape.

3.6.2 National network of CDR bodies

CDR was first implemented in 1989 after the adoption of the Consumer Protection Law.¹⁴⁶ This led to the piloting of the first Mediation and Arbitration entity, Centro de Arbitragem de Conflitos de Consumo de Lisboa, jointly launched by the Consumer Institute (present day DGC (P)) and several national and regional government bodies and consumer bodies.¹⁴⁷

Currently, there are 12 accredited CDR bodies (including arbitration) in Portugal¹⁴⁸ These CDR centres provide legal information and assistance to consumers, including helping to resolve their disputes via mediation, conciliation or arbitration.¹⁴⁹ Their services are free of charge to consumers for eight of the 12 CDR bodies, and cost moderate fees known as 'file taxes' for four of the 12 CDR bodies (ICPEN 2022: DGC (P)).

As of 2022, this network of CDR bodies handles around 12,000 complaints per year. Consumer complaints arise most frequently in relation to the telecommunications and energy sectors.¹⁵⁰ Although this figure seems low relatively to Portugal's population size of over 10 million people, some of the initial complaints may have been resolved before ever reaching the CDR bodies, both due to the work of the DGC (P) and the way the Book of Complaints may incentivize businesses to remedy complaints before they escalate.

Of the complaints processed, most of them obtained resolution after intervention by the CDR bodies: 80 per cent get resolved via mediation while 20 per cent get settled via conciliation or arbitration. On average, it takes 70 days to reach agreement. The main cause of failed dispute resolution is due to refusal by business to accept arbitration.¹⁵¹

¹⁴³ DGC (P) also organizes and provides the list of competent CDR bodies to the European Commission, based on the ADR Directive; monitors compliance of CDR bodies, including imposing fines and penalties where it is appropriate; and coordinates and promotes the consumer arbitration network (ICPEN Portugal 2022: DGC (P)).

¹⁴⁴ ICPEN Portugal (2022): DGC (P).

¹⁴⁵ When consumer submits complaint to the DGC (P) through the Book of Complaints, the complaint is first examined to determine whether it constitutes illegal practices. If so, the DGC (P) takes the appropriate actions based on their powers conferred by the law. If not, the DGC (P) informs the consumer of the competent CDR bodies.

¹⁴⁶ Law number 29/81, following the legal framework of voluntary arbitration, Law number 31/86.

¹⁴⁷ Available at: https://ec.europa.eu/info/sites/default/files/adr_the_portuguese_model.pdf

¹⁴⁸ Seven CDR bodies with generic regional competence located in: Lisboa; Porto; Faro, Algarve; Coimbra; Braga; Guimarães; and Funchal, Madeira. Two CDR bodies with generic national competence: CNIACC; Universidade Autónoma. Three CDR bodies with national expertise competence in the sectors of automobile; insurance; travel agencies.

¹⁴⁹ Available at: https://ec.europa.eu/info/sites/default/files/adr_the_portuguese_model.pdf

¹⁵⁰ Ibid.

¹⁵¹ Available at: https://ec.europa.eu/info/sites/default/files/adr_the_portuguese_model.pdf

It is interesting to note that since 2011 the Portuguese CDR mechanism transitioned from voluntary to compulsory participation for businesses.¹⁵² This mandatory requirement applies to businesses operating in the essential public services sectors,¹⁵³ which include energy, telecommunications, water and waste, transportation, and postal services. Since 2019, this mandatory system has been extended to any consumer disputes up to EUR 5,000 in value.¹⁵⁴ To use the system, consumer needs to request for mediation or arbitration hearing, during which they may or may not be represented by a lawyer. The arbitration process results in a legally binding decision issued by an independent judge.¹⁵⁵ Such decisions can be readily enforced when needed, since some CDR bodies such as CIMAAL based in Algarve¹⁵⁶ is interoperable with the Portuguese judicial system.¹⁵⁷ Such interconnectivity between CDR systems effectively helps to ensure not only procedural justice but the delivery of substantive justice to consumers.

While the development from a voluntary to a mandatory system of national CDR bodies brings about many benefits such as high dispute resolution rates, it also comes with several challenges. These include an observed increase in the following areas: the complexity of and requirements for managing the CDR system; the number of disputes that require arbitration hearing; the need for judges, recruitment and training; length of time to resolve disputes; and operating costs.¹⁵⁸ On the latter point, the main sources of funding for the network of CDR bodies currently come from governments at the national, regional and municipal levels,¹⁵⁹ in addition to other sources of funding from the DGC (P) managed Consumer Fund, business associations, and consumer association. However, given the growing need for more funding as a major challenge, innovative business models need

to be developed to boost the operating income of the CDR bodies.

3.7 The United Kingdom

The current legal basis for CDR in the United Kingdom is derived from the European Union's ADR Directive 2013¹⁶⁰ and ODR Regulations 2013¹⁶¹. These provisions were transposed into United Kingdom's national law, the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015 and the (Amendment) Regulations 2015.¹⁶² As Brexit took full effect in January 2021 after an agreement was reached at the end of 2020¹⁶³, it remains to be seen how the United Kingdom's cross-border CDR arrangements with the European Union will be impacted, apart from the exclusion of United Kingdom from the European ODR Platform.¹⁶⁴

The Chartered Trading Standards Institute (CTSI) carries out the competent authority role for CDR¹⁶⁵ in the United Kingdom.¹⁶⁶ CTSI is responsible for assessing and approving designated CDR bodies in the non-regulated sectors and overseeing their activities. The CTSI lists 59 approved CDR bodies,¹⁶⁷

¹⁵² ICPEN Portugal (2022) : RAL Centros De Arbitragem.

¹⁵³ Based on Law number 6/2011.

¹⁵⁴ Based on the Consumer Protection Act (CIMAAL 2022: Survey).

¹⁵⁵ Available at: https://ec.europa.eu/info/sites/default/files/adr_the_portuguese_model.pdf

¹⁵⁶ Centre de Arbitragem de Conflitos de Consumo do Algarve.

¹⁵⁷ CIMAAL (2022 : Survey)

¹⁵⁸ ICPEN Portugal (2022) : RAL Centros De Arbitragem.

¹⁵⁹ These include the Ministry of Justice, four regulatory entities (amount of funding provided is based on the number of complaints handled), local associated municipalities, and the regional Government of Madeira.

¹⁶⁰ Directive 2013/11/EU. Available at : eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:165:0063:0079:EN:PDF

¹⁶¹ Regulation (EU) 524/2013. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:165:0001:0012:EN:PDF>

¹⁶² Available at: <https://www.legislation.gov.uk/ukxi/2015/542/made/data.pdf>. Mirroring the European Union, it is compulsory for business to provide consumer with the name and website address of an approved CDR body in their economic sector. Even for sectors where business is not required to engage with consumer in the CDR process, they must still inform consumer whether they intend to do so. See: <https://www.businesscompanion.info/sites/default/files/Alternative-Dispute-Resolution-Regulations-2015-guidance-for-business-Jan-2016.pdf> (ADR Regulations 2015: 10).

¹⁶³ While the United Kingdom officially left the European Union's single market on 31 January 2020 after the 2016 vote, things remained the same for 11 months until 31 December 2020 to allow enough time for an agreement to be reached on a new trade deal (BBC 2020).

¹⁶⁴ This exclusion started since January 2021, when United Kingdom was delisted in the drop-down country selection menu of the European ODR Platform. See: <https://research-briefings.files.parliament.uk/documents/CBP-7336/CBP-7336.pdf>

¹⁶⁵ See: <https://www.tradingstandards.uk>

¹⁶⁶ CTSI 2021: Website; OA 2022: Survey.

¹⁶⁷ See: <https://www.tradingstandards.uk/consumers/adr-approved-bodies>

many of which are ombudsman schemes. In addition, the Ombudsman Association, a membership body for ombudsman schemes and major complaints handling bodies, also lists CDR schemes on their website.¹⁶⁸

In the United Kingdom, CDR schemes are typically established in one of three ways:¹⁶⁹ 1) statutory, where a CDR body is established by law and given compulsory jurisdiction over specified types of regulated businesses and their activities;¹⁷⁰ 2) underpinned by statute, where a requirement to be covered by a CDR body is stipulated in legislation or by a regulator but a specific CDR body is not created;¹⁷¹ 3) voluntary, where a CDR body is established by a particular trade body but with independent governance.¹⁷² Examples of two well-established statutory CDR ombudsman schemes and selected voluntary CDR entities are discussed below.

3.7.1 Statutory CDR:¹⁷³ Financial Ombudsman Service

There are two main statutory CDR bodies in the United Kingdom: Financial Ombudsman Service (FOS) and Ombudsman Service Energy. FOS (2021: Interview; 2021: Annual Report) is selectively discussed here as it is the largest ombudsman scheme in the United Kingdom and in the world. It is a public body that provides largely a single access point for consumers to raise financial disputes free of charge.¹⁷⁴ Numbering around 2700, FOS employees, comprised mainly of case handlers and ombudsmen, possess a wide

range of technical, academic, and professional qualifications and experience.¹⁷⁵

FOS receives funding from various sources directly or through the Financial Conduct Authority (FCA), including a 'group account fee' from eight major financial institutional groups in the United Kingdom,¹⁷⁶ and levy collected through compulsory jurisdiction and from voluntary jurisdiction.¹⁷⁷ FOS allows three free cases per year for any business outside the group account, before a fee of GBP 750 is required for each case over that limit.

In order for FOS to handle a complaint and provide a decision, the consumer needs to show that they have attempted to contact the business to resolve the dispute. The case handling process involves an initial assessment and final binding decision, the latter of which is sent by email. Although FOS currently provides a basic CDR platform for receiving disputes, they are working on developing a digital portal that covers the entire consumer complaint process.¹⁷⁸

Since its inception in 2001, it has received more than 3.9 million complaints and resolved over 97 per cent of them (FOS 2021: Annual Report). There are at least two reasons for the high rate of resolution: most of the disputes (87 per cent) are resolved at the earlier, informal review stage without being referred to ombudsman; when they do reach ombudsman, the decision provided is final, binding on business,¹⁷⁹ and enforceable administratively¹⁸⁰ or through court.

FOS garners relatively high confidence and trust from their users and the public: during a 2019 survey, 77 per cent of the public trusted FOS,¹⁸¹ while 72 per cent of businesses were confident in the service FOS provided and 57 per cent of users were satisfied (ibid.)¹⁸² One of the reasons for this is that as of 2021,

¹⁶⁸ The list includes both public and private sector CDR schemes (<https://www.ombudsmanassociation.org/find-ombudsman>). Some of these schemes are not found on the CTSI website, such as the Advertising Standards Authority (ASA).

¹⁶⁹ Cortes P eds (2016). *The New Regulatory Framework for Consumer Dispute Resolution*. See: <https://academic.oup.com/book/348>

¹⁷⁰ For example, the FOS, though it also applies to businesses in other sectors such as higher education, legal services, and pensions (OA 2022: Survey).

¹⁷¹ For example, the energy sector, estate agents, gambling, green deal, postal services, property letting agents, and telecommunications (OA 2022: Survey).

¹⁷² For example, the Removals Industry Ombudsman.

¹⁷³ To ensure consistency, this section uses CDR to refer to and encapsulate ADR schemes, despite the latter being the more commonly used term in the United Kingdom.

¹⁷⁴ Except for certain insurance and pensions disputes which are covered by other for-profit and commercial CDR schemes that overlap with FOS.

¹⁷⁵ FOS 2022: Survey.

¹⁷⁶ Accounted for 36 per cent of overall funding in 2020.

¹⁷⁷ Accounted for 35 per cent of overall funding in 2020.

¹⁷⁸ FOS 2022: Survey. See: <https://www.financial-ombudsman.org.uk/data-insight/blogs/join-digital-transformation>

¹⁷⁹ If the consumer accepts it. If not, the consumer can bring it before court.

¹⁸⁰ The FCA can impose penalty on business for non-compliance with decision through fines or other means.

¹⁸¹ The reason being FOS publishes their data in their annual reports.

¹⁸² There are three reasons why businesses find FOS helpful. First, FOS fills a gap in dealing with consumers who are oth-

FOS (2022: Survey) has recovered more than GBP 150 million from consumer disputes related to frauds and scams.

3.7.2 Voluntary CDR bodies

In the United Kingdom, there is a patchwork of voluntary CDR bodies that businesses may choose to adhere to. Apart from being listed on the CTSI and Ombudsman Association websites alongside statutory CDR bodies, as previously noted, these voluntary CDR bodies are not coordinated operationally with a single access point for consumers – neither under an umbrella structure¹⁸³ nor as part of any ‘residual’ CDR scheme¹⁸⁴ that provides complete sectoral coverage. The existence of multiple CDR schemes and CDR entry points and overlapping CDR sectoral scopes, can make it challenging for consumers to navigate the complex regulatory and CDR landscapes.¹⁸⁵

Some examples of competing CDR schemes that intersect in sectoral scope¹⁸⁶ can be found in the 1) retail or consumer goods sectors 2) communications sector; 3) motor vehicles.

Despite the overlapping CDR schemes, which creates inconsistencies in quality standards and complaint handling processes across CDR schemes, coverage remains incomplete in sectors such as supermarket and gym, both of which lack effective CDR.

To improve this, the Ombudsman Association has been advocating for a single, mandatory ombudsman

for each economic sector. This resulted in the recent creation of a single, mandatory ombudsman in the rail sector. Meanwhile, work is being undertaken to establish the same for the ‘new homes’ sector. Ultimately, the goal is to create consumer access to an ombudsman in all markets.

3.8 The European Union

The only fully operational regional CDR is in the European Union, namely the European ODR Platform,¹⁸⁷ supported by the European Consumer Centre Network¹⁸⁸ (ECC Net). The discussion below explores recent developments around the European ODR Platform and the ECC Net. To illustrate how the latter works, the experiences of France ECC and Germany ECC are highlighted.

3.8.1 The European ODR Platform

The European ODR Platform was established to provide a single access point for Europe-based consumers to resolve disputes in a less expensive and quicker way than litigation (Ec.europa.eu 2016).¹⁸⁹ It can be used for disputes arising from both domestic and cross-border online purchases across the European Union, Iceland, Liechtenstein and Norway,¹⁹⁰ as shown by the multi-lingual services and register of 468 ADR bodies on the platform.¹⁹¹

The platform is particularly useful if the consumer has not yet contacted the business, or if the business is open to dialogue. Through the online portal, consumer can contact business directly for negotiation via online messaging or virtual meeting (EUROPA 2021)¹⁹². Alternatively, consumer can contact business through

erwise without redress options. Second, businesses tend to cooperate closely with FOS during case handling, including on how to prevent disputes. Third, FOS fully explain their decision to the business (FOS 2021: Interview).

¹⁸³ CTSI acts as the competent authority for disputes that fall outside the remits of sectoral regulators (such as FCA; energy regulator, Ofgem; or telecommunications regulator, Ofcom) which, in theory, should provide good coverage for all sectoral disputes..

¹⁸⁴ Hodges, C., Creutzfeldt, N. and MacLeod, S. 2014. ‘Reforming the EU Consumer ADR Landscape: Implementation and its Issues’ (policy brief from 2014 ADR conference in Oxford). The Foundation for Law, Justice, and Society. See: <https://www.fljs.org/reforming-eu-consumer-adr-landscape-implementation-and-its-issues>

¹⁸⁵ For instance, there have been cases where complaints were manually redirected by the FCA from the Pensions Ombudsman and the Legal Ombudsman to FOS so that they could be dealt with more appropriately (FOS 2021: Interview).

¹⁸⁶ See: <https://www.tradingstandards.uk/consumers/adr-approved-bodies> and <https://www.ombudsmanassociation.org/find-ombudsman?search=&location=All&category=All>

¹⁸⁷ Established in 2016.

¹⁸⁸ Digital version established in 2005.

¹⁸⁹ See: https://ec.europa.eu/commission/presscorner/detail/en/IP_16_297

¹⁹⁰ In addition to consumer complaints, the platform also supports a feature for businesses to lodge complaint against consumers if the consumer resides in Belgium, Germany, Luxemburg, or Poland. See: <https://ec.europa.eu/consumers/odr/main/?event=main.trader.register>

¹⁹¹ Available at: <https://ec.europa.eu/info/sites/default/files/2021-report-final.pdf>

¹⁹² This online negotiation feature was implemented in July 2019. Available at: https://ec.europa.eu/info/sites/default/files/odr_report_2020_clean_final.pdf; and see: <https://ec.europa.eu/consumers/odr/main/?event=main.home.howitworks>

their respective national ADR bodies which may provide CDR services such as mediation and/or adjudication. These bodies are neutral, third parties selected by Member States based on quality criteria set out in the European Union's legislation. Therefore, although the platform is not considered full-fledged due to its functions being limited to channelling disputes and negotiation, it does also help to provide consumers with easy access to other CDR approaches offered by interconnected certified ADR bodies.

Procedurally, once the consumer submits an online form, the platform notifies the business of the request. If the business is willing to engage, the parties can exchange messages, send attachments such as product photos and schedule an online meeting through the platform's dashboard. However, the business needs to first register on the platform, which is a lengthy and complicated process. Both sides have a total of 90 days to reach an agreement and resolve the dispute directly; they may also withdraw from direct communications at any time.

If the parties cannot reach an agreement, the business may propose a list of dispute resolution bodies to use. The consumer can respond by selecting an ADR body from the list provided or request a new list in the dashboard. The consumer has 30 days to agree on an ADR body, starting from when the consumer submits the complaint. If the parties do not reach an agreement on the ADR body within 30 days, the platform will close the case (*ibid.*).

If the business outright refuses the consumer's request to engage, either party withdraws from the process, or 90 days have passed with no result, the consumer has two options. The consumer can try to find a solution with the help of an ADR body – provided that the parties can agree on an ADR body within an additional 30 days – or the consumer can try a different dispute resolution tool from a list of options (*ibid.*).¹⁹³

- European Consumer Centre Network (ECC Net), which is a network of offices co-funded and coordinated by the European Commission (elaborated below) for cross-border consumer disputes within the European Union. ECC Net

¹⁹³ These tools include the following and are explained in a procedural infographic produced by the European Commission that shows the purchase and dispute journey from beginning to end. Available at: https://ec.europa.eu/consumers/odr/resources/public2/documents/consumer_rights/EN/infographic_procedural_en.pdf

informs consumers of their rights and facilitates the resolution of cross-border disputes online or offline with businesses based in another member State (or Iceland or Norway) and advises on who to contact if they cannot help.¹⁹⁴

- National consumer bodies or regulatory authorities, which inform consumers of their rights so they can exercise them appropriately, and which can enforce those rights. In addition, many regulatory authorities have specific procedures for service providers in their sector and can help to resolve disputes fairly and quickly.¹⁹⁵
- FIN-NET, which is a network of national organizations responsible for settling financial service-related consumers' complaints out of court. FIN-NET promotes cooperation among national ombudsmen in financial services and provides consumers with easy access to ADR procedures in cross-border financial services-related disputes.¹⁹⁶
- Legal action, such as the European Small Claims Procedure to make a claim for a maximum value of EUR 5,000; the European Payment Order to recover monetary claims for uncontested civil and commercial claims (except for Denmark); or formal court procedure, which can be used against businesses that are based abroad but active in the consumer's home country.¹⁹⁷

¹⁹⁴ See: https://ec.europa.eu/info/live-work-travel-eu/consumer-rights-and-complaints/resolve-your-consumer-complaint/european-consumer-centres-network-ecc-net_en and https://europa.eu/youreurope/citizens/consumers/consumers-dispute-resolution/informal-dispute-resolution/index_en.htm#shortcut-2-european-consumer-centres

¹⁹⁵ See: https://ec.europa.eu/info/policies/consumers/consumer-protection-policy/our-partners-consumer-issues/national-consumer-bodies_en and https://europa.eu/youreurope/citizens/consumers/consumers-dispute-resolution/informal-dispute-resolution/index_en.htm#shortcut-2-european-consumer-centres

¹⁹⁶ See: https://ec.europa.eu/info/business-economy-euro/banking-and-finance/consumer-finance-and-payments/retail-financial-services/financial-dispute-resolution-network-fin-net/fin-net-network/about-fin-net_en and https://ec.europa.eu/info/business-economy-euro/banking-and-finance/consumer-finance-and-payments/retail-financial-services/financial-dispute-resolution-network-fin-net/make-complaint-about-financial-service-provider-another-eea-country_en

¹⁹⁷ See: https://europa.eu/youreurope/citizens/consumers/consumers-dispute-resolution/formal-legal-actions/index_en.htm

The entire process has a limit of 120 days under normal circumstances (figure 3.3),¹⁹⁸ including the involvement of third-party ADR body if needed. Under exceptional circumstances, an extension may be granted up to 180 days or 270 days, depending on the situation and the country or countries involved.¹⁹⁹

Compared to 2019, the European ODR Platform received significantly more consumer disputes – by around 30 to 40 per cent – during the months of April to June (European ODR Report 2021).²⁰⁰ This coincided with the first Covid-19 pandemic-induced lockdown, which resulted in mass cancellations of travels and an increase in B2C e-commerce activities. Consequently, around 25 per cent of all retail disputes were related to airlines in 2020 (ibid.). Cross-border complaints accounted for 50 per cent of all disputes launched on the platform.

Overall, of all the complaints launched on the platform, only 1 per cent reached an ADR body while 89 per cent were automatically closed after the 30-day legal deadline, 6 per cent were refused by business, and 4 per cent were withdrawn by consumer (ibid). These low rates of resolution and business response, coupled with the lengthy procedures, highlight ongoing challenges facing the European ODR Platform. Further, the European Commission ADR Assembly (2021) concluded that:²⁰¹ platform participation rates should be increased through encouraging consumers, incentivizing businesses, or making business participation mandatory; clearer guidance for platform users, easier access especially for vulnerable consumers, and clearer signposting for consumers in cross-border cases are needed; AI and law-bot for case triaging should be implemented transparently.

¹⁹⁸ The platform provides guidance notes on its procedural flow here: <https://ec.europa.eu/consumers/odr/userguide/?page=landing>

¹⁹⁹ European Union Monitor (2019) notes that “Article 8(e) of the ADR Directive stipulates that in the case of highly complex disputes, the 90-day period for completing the ADR procedure can be extended at the discretion of the ADR entity. Belgian law establishes in addition that the 90-day period can be extended only once (to a maximum of 180 days), Portuguese law that it can be extended only twice (to a maximum of 270 days).” See: https://www.eumonitor.eu/9353000/1/j4nvhdhfdk3hydztq_j9vvik7m1c-3gyxp/vl27h6ritqt

²⁰⁰ Available at: <https://ec.europa.eu/info/sites/default/files/2021-report-final.pdf>

²⁰¹ Available at: https://ec.europa.eu/info/sites/default/files/summary_report_on_the_2nd_adr_assembly.pdf

3.8.2 ECC Net

The ECC Net was established in 2005 as a tightly knit network of offices based in each member State as well as in Iceland and Norway, led by the ministries or consumer organizations of the participating countries. It offers services and actionable information to consumers free of charge. It is not related to or interconnected with the European ODR Platform. Around 48 per cent of all cases handled by ECC Net have been resolved. Most of the unresolved cases are categorized as fraud or involve conflict of commercial interest.

For ECC to intervene in a case, the consumer needs to contact the ECC office in their country of residence and provide proof that they have tried to contact the business, except in cases where the consumer is deemed vulnerable according to national legislation. Using the information provided by the consumer about the purchase and dispute, the ECC can help the consumer contact the business through the respective ECC office in the country of the business and, if the respective ECC office accepts the case, the two ECC offices share information about the case (ibid).

If no agreement is reached, the consumer is informed by their ECC about their options, which include mediation (the ECC can help with) and litigation. The ECC has no dispute resolution nor enforcement powers to decide on the issue at hand and ensure that the business comply with the agreement reached with the consumer. However, they can alert the European Commission or national regulators about recurring problems or systemic issues, especially as the IT systems of ECCs are designed to gather data from the enquiries and complaints.

3.8.3 Binational ECC: ECC France and ECC Germany

The ECC Net offices of France and Germany are jointly operated with a binational structure, where the offices and staff from both countries are physically located near the respective geographical borders. This arrangement helps with seamless bilateral collaboration during case handling processes. . However, continual efforts are being made to strategize about how best to modernize their system in the future, including exploring options to use AI-enabled tools. Such tools

can help to better general template response based on higher sensitivities to applicable law, allow for the extraction of partial data from cases for analysis, and to better compete with private companies that have better IT tools and resources (ibid.).

During 2021, ECC France processed 15,700 consumer contacts, of which 13,274 were complaints and 2,426 were information requests; ECC Germany processed 14,668 consumer contacts, of which 10,765 were complaints and 3,903 were information requests. The resolution rate for this binational ECC system is around 60 to 80 per cent, depending on the year and how markets behave. Consumer satisfaction surveys show a 90 per cent satisfaction rate. Although the ECCs prioritizes work related to Brexit over other non-European Union cases, they do direct non-European Union disputes to embassies or consumer organizations.

4. COMMON CHALLENGES AND GOOD PRACTICES GLOBALLY

Several common challenges emerged from the foregoing description about the functioning and effectiveness of national CDR models and regional CDR systems. These include how to: ensure sufficient financial and human resources are available; design CDR architecture with comprehensive sectoral coverage; increase business participation in CDR and enforce business compliance with agreement; expedite case processing, simplify procedural workflow, and optimize efficiency; upskill personnel through recruitment and training; improve practices and adhere to CDR principles; overcome impediments preventing effective cross-border CDR.

Taking a deeper dive into selected challenges, this chapter examines the intricacies around the root causes and interrelated issues that make these challenges hard for policymakers and regulators to overcome. These include lack of business participation in CDR, business compliance with CDR outcome through binding and enforceable decision, low levels of consumer awareness, barriers to resolving cross-border disputes effectively, and funding matters. The implications arising from these challenges are explored to appreciate how they impact consumers. Selected good practices globally are presented at the end of each section to illustrate the CDR approaches and strategies currently being deployed to counter these obstacles.

As such, tackling the challenges on the ground requires sustained commitments and efforts by consumer authorities and sectoral stakeholders working in various domains at various levels of government. It requires a systems-thinking approach²⁰² to the development, implementation and evaluation of comprehensive policy framework and robust legal framework around consumer protection, access to justice and CDR. The design of these national policies and laws should be based on established principles, clear requirements and quality

criteria as outlined in the UNGCP²⁰³ and the UNCTAD Manual for Consumer Protection.²⁰⁴

Doing so would enable government authorities, including consumer protection enforcement agencies and sectoral regulators, to exercise their powers fully through the whole range of regulatory tools at their disposal to achieve their mandates and address systemic issues. As UNCTAD (2018) notes, “Access to justice in the context of consumer protection is also related to the responsibility of government authorities to receive and act upon consumer complaints, either to undertake enforcement action to promote effective compliance with consumer protection laws and/or to obtain or facilitate redress for consumers. Such responsibility is key to ensuring healthy markets that increase the welfare of consumers and contribute to more inclusive and sustainable development.”

In that regard, both judicial and non-judicial CDR systems have a role to play in contributing to helping the government with these responsibilities. It is thus important to recognize the need to integrate and fulfil functions “related to consumer advice, data aggregation and dissemination and market behaviour improvement” within CDR systems,²⁰⁵ be that judicial or non-judicial systems.

4.1 Businesses engagement

The reluctance of businesses to participate in CDR is a particularly prominent challenge facing the European Union. In 2018, only around half of all

²⁰² See OECD (2019), available at: [https://www.oecd.org/naec/averting-systemic-collapse/SG-NAEC\(2019\)4_ILASA-OECD_Systems_Thinking_Report.pdf](https://www.oecd.org/naec/averting-systemic-collapse/SG-NAEC(2019)4_ILASA-OECD_Systems_Thinking_Report.pdf)

²⁰³ Available at: <https://unctad.org/en/Pages/DITC/CompetitionLaw/UN-Guidelines-on-Consumer-Protection.aspx>

²⁰⁴ This applies to both national CDR systems and private CDR entities (UNCTAD 2018): “Where alternative dispute resolution is administered by non-State bodies, that is, by private out-of-court alternative dispute resolution entities, most countries impose additional legal requirements to guarantee a minimum standard of expertise and due process, in particular with regard to independence, transparency, effectiveness, legality, liberty and representation and the adversarial principle. The aim is to ensure that dispute resolution is delivered with the necessary knowledge and skills, in a fair way, and to ensure supervision according to relevant criteria by State authorities.” Available at: https://unctad.org/system/files/official-document/cicplpd11_en.pdf.

²⁰⁵ Ibid.

businesses surveyed in the European Union were aware of ADR procedures in their own country.²⁰⁶ Overall, business participation rate in ADR mechanisms was 30.4 per cent that year.²⁰⁷ This figure was only slightly higher in 2019 at 32.6 per cent.²⁰⁸

According to European Union Law,²⁰⁹ online businesses and e-marketplaces are required to provide an easily accessible electronic link to the European ODR Platform on their websites. Yet only 28 per cent of businesses surveyed in 2019 were compliant.²¹⁰

4.1.1 Challenges and implications

It has been reported that low number of business participation in ADR or ODR schemes can create a major hurdle for the effective functioning of the overall CDR system.²¹¹ As Germany's consumer authority notes, "There has been and still is a great number of traders who refuse to register on the platform, which brings the whole foreseen procedure to a halt, leading to the consumer receiving no solution to the complaint."²¹²

This lack of businesses participation cannot solely be attributed to low levels of CDR awareness. Instead, lack of willingness from businesses, as evidenced from their low response rates to consumer complaints, was the main reason. In 2019, around 80 per cent of

businesses surveyed did not respond to complaints sent to them through the European ODR Platform.²¹³

The root causes of this lack of willingness by businesses to participate, however, are due to lack of requirement to oblige or mandate business participation and,²¹⁴ in the case of the United Kingdom, high case fees for businesses.²¹⁵

4.1.2 Good practices

Incentivize business participation through public rankings

Publishing ranking of business response rates to consumer complaints can be an effective 'soft' means of incentivizing and increasing business participation, since businesses strive for good reputation as caring and reliable company.

In Brazil, consumidor.gov.br analyzes the data on the response rate of businesses to consumer complaints and publishes it as a ranking on its platform. This transparent system shows how committed businesses are in resolving consumer disputes and incentivizes them to do better by competing with one another to reach higher ranking spots. "Since it does not have a public shaming mechanism for those companies that do not have a good performance, the greatest incentive for the companies to use the platform is the possibility to diminish the number of lawsuits related to consumers."²¹⁶ As a result, the platform consistently reports high user satisfaction of around 80 per cent. For example, in 2018 around half a million complaints were resolved through the platform, which meant that potentially half a million lawsuits were diverted away from litigation successfully.²¹⁷

Mandatory jurisdiction

As a 'hard' means of ensuring business participation, mandatory jurisdiction is a very powerful tool for

²⁰⁶ European Commission, Retailers' attitudes towards cross-border trade and consumer protection, 2019, P102. Available at: https://ec.europa.eu/info/sites/default/files/retailers-2018-main-report_en.pdf. When asked, a slight majority of all companies in EU27_2019 (54.2 per cent) say they are aware of ADR bodies, while three in ten (32.6 per cent) participates in ADR mechanisms. This represents 56.9 per cent and 33.5 per cent respectively of the total persons employed.

²⁰⁷ Available at: [consumers-conditions-scoreboard-2019_en.pdf](https://ec.europa.eu/info/sites/default/files/consumers-conditions-scoreboard-2019_en.pdf) (europa.eu)

²⁰⁸ When asked, a slight majority of all companies in EU27_2019 (54.2 per cent) say they are aware of ADR bodies, while three in ten (32.6 per cent) participates in ADR mechanisms. This represents 56.9 per cent and 33.5 per cent respectively of the total persons employed.

²⁰⁹ Article 14 of Regulation (EU) No 524/2013.

²¹⁰ When asked, a slight majority of all companies in EU27_2019 (54.2 per cent) say they are aware of ADR bodies, while three in ten (32.6 per cent) participates in ADR mechanisms. This represents 56.9 per cent and 33.5 per cent respectively of the total persons employed.

²¹¹ BEUC (2021: Survey).

²¹² BMJV (2021: Survey).

²¹³ According to the European Commission (COM 2019/425, 09/25/2019).

²¹⁴ Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/698442/Final_report_-_Resolving_consumer_disputes.pdf

²¹⁵ OA (2021: Interview).

²¹⁶ Schmidt-Kessen, M.J., Nogueira, R. & Cantero Gamito, M. Success or Failure? Effectiveness of Consumer ODR Platforms in Brazil and in the European Union. *J Consum Policy* 43, 659–686 (2020).

²¹⁷ *Ibid.*

overcoming business reluctance to engage in CDR. Some countries have been applying this measure, particularly in essential public services and key utilities sectors. At the European Commission ADR assembly,²¹⁸ 400 ADR practitioners agreed that as a major driver behind the current insufficient uptake of ADR, there are “no or insufficient incentives for the traders to participate where the ADR schemes are voluntary.” Therefore, mandating business participation through legal reform is pertinent.²¹⁹ As BEUC notes: “Trader participation in the ADR should be made mandatory – if not across all sectors, then at least where there is proof of systemic non-participation (e.g., air transport) or in essential services sectors.”²²⁰

In the United Kingdom, business participation in CDR is mandatory in certain regulated sectors. For example, the law provides FOS with compulsory jurisdiction over financial services sector.²²¹ However, as only selected sectors are regulated, this leaves some business in voluntary jurisdictions, as Ombudsman Association (2021: Survey) notes: “It should be mandatory for businesses to belong to an ombudsman.”²²²

Full sectoral coverage through mandatory jurisdiction

Even when mandatory participation in CDR is in effect for certain sectors, consumers may face a lack of access to justice in the remaining sectors. Therefore, it is important to try to consider that mandatory jurisdiction be applied to all CDR sectors in policymaking and law-making with regards to CDR landscape architecture design.

In Portugal, all traders and services providers must inform consumers of the available avenues for CDRs (Law 144/2015). In addition, all service providers of regulated sectors that transact over EUR 5000 in value must inform consumers about competent

CDR bodies.²²³ As another mandatory tool that complements the CDR system through advisory services, the Book of Complaints helps to ensure that no consumer grievances slip through the cracks, since businesses complained against are legally required to respond. The combination of the Complaints Book with the national network of 12 competent CDR bodies ensures that all businesses are accountable, no matter the channel through which and to whom (business or authority) the complaints and disputes are filed.²²⁴

4.2 Enforceability of decision

Unlike court, agreed outcome from CDR is often provided in the form of voluntary advice rather than decisions that are binding and final. This means a business may choose to be non-compliant or appeal it through CDR, either internally or externally, or bring it before court.²²⁵ As the FOS (2021: Survey) notes: “No dispute can be allowed to continue forever - either at the ombudsman service or in the courts, to which we are an alternative process.”²²⁶

4.2.1 Challenges and implications

If consumer need to rely on the voluntary goodwill of the business to abide by the CDR outcome and act, it disempowers them and creates uncertainties. When CDR bodies lack enforcement power granted by legally binding outcome, and if the business is non-compliant and decides not to act – whether it involves compensating the consumer financially, apologizing, or both – the entire CDR procedure, which can be lengthy, would be pointless and the consumer’s efforts will have been in vain. This not only reduces the effectiveness of the CDR system in providing substantive justice, but it can also decrease consumers trust and confidence in CDR schemes.

²¹⁸ Available at: [summary_report_on_the_2nd_adr_assembly.pdf \(europa.eu\)](#)

²¹⁹ ADR point (2021: Interview).

²²⁰ BEUC (2021: Survey).

²²¹ Section 226: Compulsory jurisdiction, Financial Services and Markets Act (2000). See: [Financial Services and Markets Act 2000 - Explanatory Notes \(legislation.gov.uk\)](#) and [3.pdf \(fca.org.uk\)](#)

²²² OA (2021: Survey).

²²³ Applicable to essential public services and key utilities sectors such as energy, telecommunications, water and waste, and postal services. Since the law was amended in 2019. See Art. 14 of the Law 26/96, 31 July, as amended by Law 63/2019, 16 August.

²²⁴ See Section 3.7.2 for details.

²²⁵ See: <https://researchbriefings.files.parliament.uk/documents/CBP-7336/CBP-7336.pdf>

²²⁶ Why does a business have to comply with an ombudsman’s decision? See: <https://www.financial-ombudsman.org.uk/faqs/all/business-comply-ombudsmans-decision>

4.2.2 Good practices

Statutory binding decision

The above obstacles can be overcome by providing CDR bodies with the powers that they need to make their decisions binding and enforceable. The Ombudsman Association (2021: Survey) notes that a CDR should ideally “have binding powers (if the complainant accepts their decision) and... some mechanism (via the Courts or via the sector Regulator) to have their decisions enforced if a company ever refused to do so,”²²⁷ adding that “the consumer should retain their rights to pursue the issue through the Courts instead if they wish.”²²⁸

In Portugal, for instance, all consumer disputes up to EUR 5,000 filed to an authorized consumer dispute arbitration centre will produce “binding decision (equivalent to a first instance judicial ruling) by an independent judge.”²²⁹ This primarily mandatory-based system derives its power from a 2019 legal amendment.²³⁰ In the United Kingdom, FOS has the power to issue binding decisions (on both consumer and business) that are final, if the decision is accepted by the consumer, and the power to enforce the decision as authorized by the legislation.²³¹ Under the terms of the compulsory jurisdiction of FOS, businesses are required to cooperate with the ombudsman in their dealings with FOS,²³² including abiding to its decisions.²³³

²²⁷ OA (2021: Survey).

²²⁸ OA (2021: Survey). Note that in Sweden and Denmark, although decision made by ombudsmen may be legally binding or non-binding, because of their quasi-judiciary nature, the decisions in effect carry similar weight as legally binding powers of decision made by court. Available at: <https://publicishoa.com/index.php/journal/article/view/195>

²²⁹ Available at: [adr_the_portuguese_model.pdf](https://eur01.safelinks.https://eur01.safelinks.office.com/adr_the_portuguese_model.pdf) (europa.eu)

²³⁰ See Art. 14 of the Law 26/96, of 31 July, amending in this issue by Law 63/2019, of 16 August.

²³¹ The decision becomes binding if the consumer accepts it, regardless of any potential objections by the business. Section 228: Determination under the compulsory jurisdiction, Financial Services and Markets Act (2000). See: [Financial Services and Markets Act 2000 - Explanatory Notes \(legislation.gov.uk\)](https://www.financial-ombudsman.org.uk/legislation.gov.uk)

²³² See: <https://www.financial-ombudsman.org.uk/who-we-are/governance-funding>

²³³ Financial Ombudsman Services, How we handle complaints (for business): <https://www.financial-ombudsman.org.uk/businesses/resolving-complaint/handle-complaints>

Contractual binding decision

The law in the Netherlands does not establish the mandatory jurisdiction of the consumer complaints board of DGC (N), nor does the board have the power to issue statutory binding decisions. Instead, bilateral agreements are made between consumer organization and trade association, stipulating that when a consumer dispute arises, the business is required to cooperate with the complaints board as a member of the trade organization. The board deals with the dispute and gives a binding decision which derives its power from the terms of the bilateral agreement. Both the consumer and the business are obliged to comply with the decision. This provides a guarantee against business non-compliance with the decision, since if the business reneges on it, the trade association will pay compensation to the consumer.²³⁴

Therefore, instead of statutory binding decision, DGC (N) provides contractually binding decision (DGC (N) 2021: Survey): “The consumer complaint boards primarily resolve consumer disputes through binding advice. Binding advice is a typical Dutch ADR procedure that slightly resembles consumer arbitration. As in consumer arbitration, parties voluntarily enter into a binding advice procedure via a dispute clause in the general terms and conditions. The board’s decision (the ‘binding advice’) is binding on both parties.”

Publish ‘name and shame’ rankings

Even when the decision is binding statutorily or contractually, business may not be fully cooperative or compliant during the CDR procedure or with the outcome.

Similar to the approach of publishing ranking of business response rates, the ‘name and shame’ approach publishes complaints upheld or resolution rates and consumer satisfaction scoring of business engagement during the CDR process. This provides a soft, potent way of compelling businesses to be compliant and hold them to account, in addition to any other sanctions or penalties that regulators may so decide to impose.

²³⁴ Presentation by Moerken on Dutch CDR system at the conference, ‘The Hidden World of Consumer ADR: Redress and Behaviour.’ Held at the Centre for Socio-Legal Studies, Oxford University, 28 October 2011. Available at: [thehidden-worldofconsumeradr-conferencenote.pdf](https://www.hidden-world-of-consumer-adr-conferencenote.pdf) (ox.ac.uk)

For instance, Financial Services and Pensions Ombudsman in Ireland²³⁵ derives its ‘name and shame’ powers from the law.²³⁶ It publishes, in a ranking, banks, insurance firms and investment companies or ‘repeat offenders’ that have had at least three complaints upheld against them. This approach helps to influence the behaviour of businesses so that they are incentivized improve their services by learning from consumer grievances.²³⁷

4.3 Consumer information

In many countries, consumers are not well-informed of their basic rights and/or approaches to dispute resolution and redress. In India, consumers generally lack basic understanding of the benefits of CDR mechanisms;²³⁸ in both India and Switzerland, many consumers are unaware of the existence of CDR bodies or do not know which CDR bodies they should use in specific cases.²³⁹ In Germany, there is widespread misconception about the differences between ADR, ODR and business in-house complaints mechanisms, where consumers cannot readily discern between them.²⁴⁰

4.3.1 Challenges and implications

Inadequate consumer information and awareness poses many challenges. One of these is a root cause that relates to the difficulties consumer face in navigating complex CDR landscape.²⁴¹ As some countries have CDR bodies that operate across multiple and overlapping jurisdictions, consumers are uncertain of the means of dispute resolution that are available to them.

In the United Kingdom, for example, the Ombudsman Association website lists 49 ombudsman schemes;²⁴²

in France, there are 91 CDR bodies.²⁴³ The Competition and Markets Authority (CMA) noted that United Kingdom’s CDR landscape is comprised of a patchwork of schemes (CMA 2021: Interview).²⁴⁴ Similarly, the Ombudsman Association (2021: Survey) commented that the biggest challenge with consumer redress in the United Kingdom is “having multiple competing redress schemes whilst at the same time having gaps in coverage. The result is that for consumers it is not clear how, or who, to raise a complaint with, there are gaps in who can access redress, access is sometimes restricted even where redress does exist, and the proliferation of schemes means there are inconsistencies in how complaints are handled.”²⁴⁵

Lack of consumer information and poor consumer awareness linked to complex landscape can impair access CDR. These hardships can in turn adversely affect consumer trust, as BEUC has noted.²⁴⁶

4.3.2 Good practices

Consumer information campaigns

CDR bodies and consumer protection authorities often seek improvement through a multi-channel approach²⁴⁷ to conducting consumer information campaign, based on enhanced advice and guidance, education, awareness-raising, and training. As an example, a non-exhaustive list of countries and regions that have deployed these methods includes Argentina, ASEAN, Brazil, China, Colombia, the European Commission, India, Mexico, the Netherlands, Republic of Korea, and the United Kingdom.²⁴⁸

Some noteworthy developments and innovative strategies include those used by CDR schemes of CCA in China and the SIC in Colombia. The CCA, a quasi-government organization,²⁴⁹ airs their information

²³⁵ See: <https://www.fspo.ie/>

²³⁶ Section 72 of the Central Bank (Supervision and Enforcement) Act 2013. See: [Central Bank \(Supervision and Enforcement\) Act 2013 \(irishstatutebook.ie\)](#)

²³⁷ See: [Financial Ombudsman given power to ‘name and shame’ offenders \(irishexaminer.com\)](#)

²³⁸ MGP (2022: Survey).

²³⁹ FCAB (2022: Survey).

²⁴⁰ BMJV (2021: Survey).

²⁴¹ BEUC (2021: Survey).

²⁴² See: [Consumer rights - GOV.UK \(www.gov.uk\)](#)

²⁴³ See: [The French ADR mechanism Specificities and future challenges \(assets-cdn.io\)](#)

²⁴⁴ CMA (2021: Interview).

²⁴⁵ OA (2021: Survey).

²⁴⁶ BEUC (2021: Survey).

²⁴⁷ Including in-person stalls, visits, and events; websites and platforms; social media channels; radio; television.

²⁴⁸ See Chapter 3 for details for some of the countries and regions mentioned.

²⁴⁹ Y. Yu, Consumer Movement in China in Robert Mayer ed., Encyclopedia of Consumer Activism, ABC-CLIO publishing, USA, Aug 2015.

about the CDR platform during primetime slots on national TV station (CCTV) and the radio station.²⁵⁰ As a result, they are currently the most trusted consumer information resource on CDR in China.²⁵¹ SIC promotes consumer awareness using smart regulation technologies known as PrevenSIC. Introduced in 2019, PrevenSIC primarily uses consumer psychology approach based on consumers' behaviour to develop pedagogical strategies as well as the data analytics approach based on the OECD's principle of evidence-based surveillance and regulatory control. Using the information collected through the Single Information System (ColombiaTIC),²⁵² the regulator can, among other objectives, encourage the use of CDR, carry out pedagogy to users and disseminate educational materials to enhance consumers' understanding of their rights with regards to the use of telecommunications and postal services.²⁵³

Landscape streamlining by design: single portal access

The easiest way to enhance consumer understanding of the CDR options available to them is to simplify it (Ombudsman Association 2021: Survey). Therefore, attempts to boost consumer awareness merely through more information and education is not enough if the root cause is left unaddressed.

In the European Union, Member States should clarify the jurisdictions of CDR bodies and make ADR and ODR processes easy for the consumer to understand and engage. One-stop-shop or single entrance for CDR has been suggested by many practitioners. For example, BEUC (BEUC, 2017) suggests that "the low awareness issue could probably be overcome with more information to consumers, one-stop-shop access to the ADR bodies, more information on the composition and governance of the ADR bodies, especially in the countries where ADR is new and consumers do not trust the independent nature of the ADR." The OA (2021: Survey) concurs with BEUC that there should be one ombudsman per sector in the United Kingdom.

In Argentina, the Ministry of Domestic Trade issued a resolution to create a single window for consumer

complaints.²⁵⁴ Businesses that have websites or web applications should include a link to the Federal Single Window, namely Portal de Defensa del Consumidor.²⁵⁵ In the Netherlands, the DGC (N) covers almost every type of consumer disputes²⁵⁶ via a single user-convenient and user-friendly entrance portal.²⁵⁷

Develop complementary policy tools

The consumer Complaints Book (Livro de Reclamações) system in Portugal is a powerful policy designed to provide comprehensive coverage and effective method to compel all business to act upon receiving a complaint. Although this is a complaint reporting channel rather than a CDR system, as part of the procedure involves market authorities and DGC (P) advising consumers of the appropriate competent CDR body to go to if the complaint is deemed civil and not criminal, that advisory aspect helps to raise consumer awareness and promote a culture of complaining. As DGC (P) released an online version in 2018 to complement the physical Book, even those consumers without prior knowledge about CDR can readily obtain advice on how to raise a dispute simply by using the Book.

In addition, that the jurisdictions of a network of 12 CDR bodies in Portugal are clearly divided prevents confusion. They are available as a national register through the European ODR Platform, organized and monitored by DGC (P).²⁵⁸ Further, DGC (P) provides information campaign about these CDR schemes as well as training and technical support to the CDR bodies, which not only raises consumer awareness of CDR procedures but also maintains the standard and quality of CDR services nationally.²⁵⁹

²⁵⁴ Resolución 274/2021 Secretaría de Comercio Interio.

²⁵⁵ This measure took effect on 30 March 2021. Businesses were given 60 days to comply. See: [Simple Law: Federal Consumer Protection One-stop Shop | Argentina.gob.ar](#) Failure to comply can lead to sanction in accordance with the provisions of Law No. 24,240 on consumer protection. See: [Argentina: Consumer protection - Creation of the "Ventanilla Unica Federal" - Lexology](#)

²⁵⁶ Apart from the sectors of financial services, rental contracts, and healthcare insurance.

²⁵⁷ See Section 3.6.1 for more information.

²⁵⁸ Cebola (2016: 264-266). 'The implementation of the Consumer ADR Directive in Portugal: Necessary Reform or Missed Opportunity?' P. 251-273, in Cortes P. ed, The new regulatory framework for consumer dispute resolution. Oxford University Press.

²⁵⁹ Available at: [adr_the_portuguese_model.pdf \(europa.eu\)](#). See Section 3.7.2 for details.

²⁵⁰ China CCA (2021: Survey).

²⁵¹ See Section 3.3.1 for details.

²⁵² Administered by the Ministry of Information and Communications Technologies (MINTIC).

²⁵³ SIC (2022: Survey).

4.4 Cross-border CDR

At present, the only well-established regional cross border CDR system is the European ODR Platform and ECC Net. However, as discussed in Chapter 3, there are several limitations with regards to their scope and functionality. Crucially, the European CDR system can only receive and be competent in dealing with disputes where both consumers and businesses are based inside the European Union, but not where one or both of the parties are outside of the European Union.

Further, the low volume of cross-border e-commerce and low consumer confidence in cross-border CDR mechanisms in the European Union are also indicative of significant barriers to cross-border in general. For example, 63 per cent of consumers in the European Union shopped online only within their own country in 2018. Only 28.3 per cent make a cross-border purchase from another European country (28.3 per cent) and even fewer shopped from outside Europe, at 18.4 per cent. Among those who shopped across Europe, more than 1 in 5 experienced a problem, of which only 5.5 per cent attempted resolution via a CDR platform while 2.4 per cent pursued their matter in court. Overall, 41.2 per cent of consumers reported that they were deterred from taking action as they thought it would have taken too long; 35.7 per cent of them did not do so due to the low value of the transaction.²⁶⁰

For these reasons, policymakers, legislators, practitioners, and researchers have been calling for the development of global CDR platforms for more than a decade at various international forums,²⁶¹

²⁶⁰ European Commission (2018). Consumers' attitudes towards cross-border trade and consumer protection. Final Report. Available at: https://ec.europa.eu/info/sites/default/files/consumer-survey-2018-main-report_en.pdf

²⁶¹ The recent UNCTAD E-Commerce Consumer Protection Cross Border Cooperation Report (2022) reported that nine out of 12 countries surveyed voiced the need for global CDR platform. The report was produced by the Competition Markets Authority (CMA) of the United Kingdom with inputs from UNCTAD and was presented at UNCTAD's Consumer Protection in E-Commerce Working Group Meeting, June 2022. Other calls for global CDR platform came from, for instance, the Note by the Secretariat (23 April 2010) from the United Nations General Assembly on 'Possible future work on online dispute resolution in cross-border electronic commerce transactions' assessed "the prospect of formulating a set of rules to support the creation of a viable global online dispute resolution system to handle small value, large vol-

including the HCCH, UNCITRAL, UNCTAD, ICPEN, Consumer International and others.²⁶²

However, since no global CDR platform exists presently, consumers are left with few options but to resort to litigation when attempting to resolve cross-border disputes, or to give up seeking redress altogether. However, judicial CDR options are very challenging to pursue in practice.²⁶³ It should be noted that although the sections below focus on legal procedures, they are applicable to the handling of cross-border disputes both in court and in non-litigation CDR options (for example, ECC Net takes these considerations when processing cross-border disputes, as discussed in 5.5.3).

4.4.1 Challenges and implications

The complexity in determining what law is applicable to the cross-border consumer disputes poses a major barrier that prevents the effective resolution. This is the objective of private international law (of conflict of laws), which is a complex field of law.

ume claims." (Page 4, A/CN.9/706, available at: https://digitallibrary.un.org/record/685379/files/A_CN.9_706-EN.pdf) This Note was based on discussions during the 43rd Session of United Nations Commission on International Trade Law (UNCITRAL), New York, 21 June-9 July 2010. Similar sentiments have also been voiced over the past decade at various United Nations-hosted meetings. These include the 46th Session of UNCITRAL, at which "The Commission noted that at the twenty-seventh session of the Working Group, a number of delegations had reiterated that the Working Group needed to devise a global online dispute resolution system accommodating both jurisdictions that provided for pre-dispute arbitration agreements to be binding on consumers and jurisdictions that did not" (Page 46, A/68/17, available at: https://unctad.org/meetings/en/SessionalDocuments/a68d17_en.pdf); and the Fourth Session of the Intergovernmental Group of Experts at UNCTAD in 2019, where "one expert said that such a mechanism would be cost effective, speedy and informal, and proposed that the secretariat set up a working group and road map on global online dispute resolution under the umbrella of the United Nations." (Page 16, TD/B/C.I/CPLP/20, available at: https://unctad.org/system/files/official-document/cicplpd20_en.pdf).

²⁶² The demand for global CDR platforms has also been voiced by policymakers at recent international events such as UNCTAD E-Commerce Week in April 2022; ICPEN Portugal in March 2022 (by India); Consumer International's Digital Rights Members Connect Call in January 2022; UNCTAD DODR Workshop (2021: Laura Best, South Africa); and by experts such as Schmitz and Rule (2017).

²⁶³ G. Howells, et al. Consumer law in its international dimension, in G. Howells, et al. Handbook of Research on International Consumer Law. Second ed., 2018.

The lack of knowledge about and lack of solution to this hurdle is apparent: “Basically the main challenges faced by the organization relate to policy and legal constraints noted in legislations. Especially in cross-border complaints, we are seriously lacking personnel and training,” notes the Eswatini Competition Commission.²⁶⁴ The United Kingdom CMA echoes this view: “Applicable laws are an issue when dealing cross-border dispute, and there is not much international agreement. The regulators are encountering such problems in dealing with foreign sellers, so it must be more frustrating for consumers.”²⁶⁵

Complex procedures and uncertain outcomes

There are three issues that are especially hard to tackle:

1) Selecting jurisdiction: If a valid dispute resolution article is absent in the contract, the plaintiff needs to lay out all connecting factors, decide which connecting factor(s) is or are most relevant, and choose a court (or a CDR tribunal) which has jurisdiction over the case based on the most relevant connecting factor(s) that they have identified. The factors generally include domiciles (habitual residents) and nationalities of both parties, the performance of the contract, and so on.

2) Determining applicable laws: The adjudicator needs to assess whether it has jurisdiction over the case before accepting to consider the merits, according to international conventions, treaties, and national laws. Once it ascertains jurisdiction, the adjudicator needs to determine what laws apply to the dispute at hand (whether its own national law or a foreign one). The adjudicator needs to understand the foreign law that is applicable to the dispute, which can often be challenging.

3) Recognizing and enforcing foreign decisions: After a consumer receives a decision issued by a foreign CDR, as the business is based in another country, the consumer must often go to that other jurisdiction to apply for recognition for the local authority to enforce the judgement.

Given the typical considerations presented above, it is not surprising that cross-border CDR cases rarely take place because it is too complicated for consumer to

pursue them. Further, cross-border cases are complex and thus resource intensive, so in most cases it does not make economic sense to pursue litigation.

For these reasons, consumers facing cross-border disputes often give up seeking redress.²⁶⁶

High financial costs

Unpredictably high financial costs are another major hinderance in cross-border CDR, as European Commission notes²⁶⁷: “potentially higher costs involved in resolving complaints and disputes cross-border are an important obstacle to the development of online sales.” Research²⁶⁸ has shown that the total costs of pursuing a cross-border consumer claim through judicial proceedings with a value of EUR 2,000 range from EUR 980 to EUR 6,600, depending on which Member States are involved. The average costs for a proceeding in the defendant’s country of residence is EUR 2,489. Since partial costs must be borne by the plaintiff, even if the case is successful (and full costs if unsuccessful), a reasonable consumer would be unlikely to file a lawsuit that is valued EUR 2,000 or lower.

Language barriers

Multilingual issues pose a significant barrier for communications between consumers and businesses as well as between both and CDR bodies. The European Commission noted in 2019 that 53.4 per cent of businesses only sell in the language of their own country, while almost one quarter of businesses sell in two languages and one in ten sells in three or more languages.²⁶⁹ Although consumers can use their own language to complain against a business in another country on the European ODR Platform, users

²⁶⁶ G. Howells, et al. Consumer law in its international dimension, in G. Howells, et al. Handbook of Research on International Consumer Law. Second ed., 2018.

²⁶⁷ Portugal (60.8 per cent), Poland (53.3 per cent), Spain (51.1 per cent) and Romania (51.2 per cent) European Commission, Retailers’ attitudes towards cross-border trade and consumer protection, 2019. Available at : https://ec.europa.eu/info/sites/default/files/retailers-2018-main-report_en.pdf

²⁶⁸ European Consumer Law Group Jurisdiction and Applicable Law in Cross-Border Consumer Complaints. Socio-Legal Remarks on an Ongoing Dilemma Concerning Effective Legal Protection for Consumer-Citizens in the European Union. Journal of Consumer Policy 21, 315–337 (1998). See: <https://doi.org/10.1023/A:1006936323258>

²⁶⁹ European Commission, Retailers’ attitudes towards cross-border trade and consumer protection, 2019, P193. Available at: https://ec.europa.eu/info/sites/default/files/retailers-2018-main-report_en.pdf

²⁶⁴ Eswatini (2022: Survey).

²⁶⁵ CMA (2021: Interview).

often inform the German consumer authority “that the built-in translation tool is not working properly.”²⁷⁰

4.4.2 Good practices

Currently, cross-border disputes present significant jurisdiction challenges for Governments who have no effective tool handy that can be used to address them. Any potential approaches need to be pragmatic and outcome-oriented, taking into account the enforceability of decisions. Some of the problems areas include access to evidence, principle of same treatment and feasibility of harmonizing laws. The OECD (2018)²⁷¹ created a useful toolkit mainly geared towards policymakers.

As discussed in Chapter 3, the European ODR Platform and ECC Net attend cross-border CDR with limited jurisdiction within Europe. The case handlers of ECC Net are trained in law so that they can check every complaint received against applicable laws (Rome I and II) to provide assistance. This is based on European Union’s legislation and case precedent. Consumer law is also useful as case handlers frequently need to explain it to businesses so that they are aware what they can and cannot do.²⁷²

Apart from the European Union ODR, few countries provide cross-border CDR to assist foreign consumers, such as those operated by the Republic of Korea,²⁷³ Mexico²⁷⁴, and Portugal.²⁷⁵ The Korean Consumer Agency (KCA) accepts complaints from foreign consumers and resolve cross-border disputes, based on the Memorandum of Understanding (MOU) KCA signed with foreign counterparts to cooperate in the resolution of cross-border consumer complaints. The CARE Conciliation programme of Mexico²⁷⁶ is designed for foreign consumers to make complaints against businesses in Mexico. Mexican law applies in most cases rather than the law of the consumer’s domicile, due to a lack of international convention or

applicable private international law.²⁷⁷ In “very special cases where there are applicable international conventions, for example Warsaw Convention 1929 and the Montreal Convention 1999 when dealing with aviation cases,” private international law is applied in the way that formal court would. The Mexican CARE practice of choice of law on cross-border consumer cases is first to apply international convention if there is a one; otherwise, *lex forum* applies if the forum is chosen by the consumer.

In Portugal, a pragmatic way of exercising jurisdiction over multiple connecting factors is used in cross-border CDR, instead of relying only on the consumer place of “habitual residence” or the business place of incorporation. For example, in their mediation and arbitration services, the Centro de Arbitragem de Conflitos de Consumo do Algarve (CIMAAL) “is competent in cross-border conflicts as long as there is an element of connection with the territorial area.”²⁷⁸ As such, CIMAAL has jurisdiction in cross border CDR based on any of the following connecting factors: the consumer’s residence when the contract was concluded online; the location of the business incorporation; the place where the contract was concluded; the place where the contract was performed. In contrast to the common approach of confirming jurisdiction over a unique connecting factor, namely the consumer’s place of habitual residence, CIMAAL extends its jurisdictions based on the choice of the consumer. This practice increases options for cross border CDR where consumer purchases from a foreign seller, especially in cross-border e-commerce.

For most parts of the world, it remains a challenge for consumers, or even legal professionals, to navigate CDR options in their quest for redress and justice. For this reason, the United Nations General Assembly noted that special attention must be devoted to how “applicable law and jurisdiction, may be addressed most effectively through international consultation and cooperation.”²⁷⁹

4.5 Funding

Ideally, CDR should be free of charge or inexpensive to use so that it is burden-free for consumers when

²⁷⁰ BMJV (2021: Survey).

²⁷¹ Available at: <https://www.oecd.org/sti/consumer/toolkit-for-protecting-digital-consumers.pdf>

²⁷² ECC France (2021: Interview).

²⁷³ Republic of Korea (2022: Survey).

²⁷⁴ PROFECO (2022: Survey).

²⁷⁵ CIMAAL (2022: Survey).

²⁷⁶ See: <https://www.gob.mx/profeco/documentos/conciliacion-from-abroad?state=published>

²⁷⁷ PROFECO (2022: Survey).

²⁷⁸ CIMAAL (2022: Survey).

²⁷⁹ See: [General Assembly Resolution 70/186 on Consumer protection, Adopted 22 December 2015 \(unctad.org\)](#)

they need it.²⁸⁰ Some Member States have achieved this common aspiration of providing free CDR to both consumers and businesses, such as the national CDR systems of Argentina, Brazil, China, Colombia, Eswatini, Mauritius, Mexico, Portugal,²⁸¹ Republic of Korea, and Sweden. Other countries such as South Africa, Switzerland and India offer CDR services that, depending on the type of disputes and sectors, are either free or for a small fee.

For instance, most cases submitted to the CDR National Consumer Tribunal (NCT) in South Africa are mostly free of charge with a few exceptions.²⁸² CDR is free of charge for a wide range of sectors in Switzerland,²⁸³ in addition to a few sectors that cost between CHF 20 – CHF 500.²⁸⁴ In India, while the CDR provided by the SAMET conciliation and mediation centre – fully funded by the consumer organization MGP (Mumbai Grahak Panchayat) – does not charge fees,²⁸⁵ the Maharashtra authority-operated Conciliation forum charges a modest fee²⁸⁶ for real estate CDR.

To offer free or low-cost CDR services, sufficient and sustainable operating income is required.²⁸⁷ Currently, budget constraints have become a significant challenge for almost every public and privately operated CDR body, regardless of whether they are based in developing and developed country. Therefore, it is important to understand the perennial challenges around sources of funding and business models for CDR.

²⁸⁰ Guidelines 11(f) and 37, UNGCP (2015).

²⁸¹ Their services are free of charge to consumers for eight of the 12 CDR bodies, and cost moderate fees known as ‘file taxes’ for four of the 12 CDR bodies (ICPEN 2022: DGC (P)). See 4.6.2.

²⁸² Maximum of R500 per application, and debt review applications cost approximately R530 per application (NCT 2022: Survey).

²⁸³ E-commerce ombudsman, banking and insurance ombudsman and public transportation, hotels, hearing optician, meat, and travel. FCAB (2022: Survey).

²⁸⁴ Including postal, telecommunication, textile, medical-dental services. Other examples include the Joint Body for the Settlement of Disputes (PES) of the Swiss Association of Textile Maintenance Companies (ASET), which ranges between CHF 80 to 100 but refundable if case is upheld. [Settlement of consumer disputes \(admin.ch\)](#)

²⁸⁵ MGP (2022: Survey).

²⁸⁶ See: <https://maharera.mahaonline.gov.in/Site/1086/About-Forum>

²⁸⁷ OA (2021: Interview).

4.5.1 Challenges and implications

Although subsidized CDR schemes – whether fully, primarily, or partially – may seem to be in a better position than fully self-sufficient CDR bodies, they nevertheless face substantial obstacles in maintaining steady stream(s) of funding. Many examples from national CDR systems illustrate their struggle with an increasing lack of funding for various reasons.

In the Netherlands, DGC (N) (2021: Survey) notes that public funding is very important for retaining their institutional and financial independence from the market, without which their operations would be in jeopardy. Yet they find it hard persuading the government to continue providing annual subsidy.²⁸⁸ In Sweden, the National Board for Consumer Disputes (ARN), which is a public authority that functions similar to court, aims to provide “(cost) efficient and legally secure procedure.” But even as a relatively advanced CDR system, they are finding it challenging to maintain funding due to political hurdles.²⁸⁹ Meanwhile, the Swedish Government has proposed and is contemplating the introduction of a fee of SEK 150 (about EUR 15). In South Africa, NCT (2022: Survey) is primarily relying on government grant to cover operating costs, and is tested by the financial strains faced.²⁹⁰ This proves even more challenging for developing countries. For example, the CDR provided by the Consumer Protection Department in the Eswatini Competition Commission relies heavily on Government funding. However, the insufficient amount of funding negatively impacts their initiatives and performance.²⁹¹

The above shows that there is a move away from providing entirely free CDR services on the basis of government subsidy alone. But even low-fee schemes face their own challenges, however. For instance, World Bank notes that “Even a modest fee for consumers would be a barrier for the vulnerable,”²⁹² which can deter and exclude consumers from using CDR, particularly for low-

²⁸⁸ For details, see Section 3.5.

²⁸⁹ ARN (2022: Survey).

²⁹⁰ “To which they are responding by employing innovative cost containment measures and new policies to reduce expenditure.” (NCT 2022: Survey).

²⁹¹ Eswatini (2022: Survey).

²⁹² World Bank (2012). Resolving disputes between consumers and financial businesses: Fundamentals for a financial ombudsman, p 7. Available at: [World Bank Document](#)

value disputes. This was previously illustrated through consumer's cost-benefit mindset when deciding whether it is practical and beneficial to pursue CDR. A case in point from the United Kingdom (OA 2021: Interview) highlights this: "Under the ADR Regulations, an ADR body is allowed to charge an admin fee (typically GBP 10 to GBP 25). This fee is purely designed to put people off complaining... That means that people who have a complaint whose monetary value is below or only just above that figure are unlikely to complain."

Privately operated CDR operators also face similar challenges. ADR Point in Greece, which does not receive any public funding but generates revenues from the provision of mediation, negotiation, consulting, training, and technology services echoed these sentiments: "There are quite a lot of diverse challenges in all fields, starting from funding that will allow us to develop and operate more online dispute resolution tools and case management systems"²⁹³

For these reasons, many CDR bodies who established their services when e-commerce first emerged more than two decades ago, both with and without government subsidy, have had to shut down.²⁹⁴ Without reliable sources of funding and sufficient, sustained income, CDR bodies often cannot survive; even when they do, the quality of services they provide may be compromised. Their capacity to handle large caseload, recruit, and train personnel, and upgrade technological systems and capacities may be limited due to a lack of financial and human resources.

4.5.2 Good practices

To this end, governments dedicate financial resources and/or confer CDR bodies the legitimate right to collect fees from relevant stakeholders. There are various approaches to this depending on the context. In general, there are three types of practices focused on initial funding and subsequent sustainable financing strategies, as discussed below.²⁹⁵

²⁹³ ADR point (2021: Interview).

²⁹⁴ See Yu Y (2013: 139). Distance Consumer Protection, China Law Press.

²⁹⁵ Therefore, fully self-funded CDR schemes, of which there are many examples, are not included here.

Publicly funded initially with continuous support

Some national CDR schemes receive government funding for both establishing the scheme and ongoing financial support. These include the national CDR platforms of Consumidor.gov.br in Brazil, SIC-Facilita in Colombia, and Concilianet in Mexico within Latin America; China's national consumer ODR platform 12315, which is fully funded by the state and supervised by SAMR;²⁹⁶ Portugal's national network of 12 CDR bodies rely mostly on public funding provided by DGC (P) through a 'Consumer Fund'²⁹⁷ and a residual funding provided by the Ministry of Justice; by the sectoral regulators of essential public services (water, energy, telecoms, postal services and transportation); and by some municipalities; and KCA, which oversees all consumer dispute procedures in the Republic of Korea,²⁹⁸ as well as a range of other government-operated CDR bodies²⁹⁹ fully funded by the Government of the Republic of Korea.

Continuous public funding with self-funding (non-statutory, no legal rights to collect fees)

As a CDR scheme based on self-regulation in the Netherlands, the DGC (N) receives around 10 per cent of its operating costs from government (but not regulators) subsidies. This provides DGC (N) with institutional and financial independence from

²⁹⁶ For details, see Section 3.3.1. Also see: 走近3·15·12315在行动——全国市场监管部门共受理投诉举报咨询2381.2万件为消费者挽回经济损失55.5亿元 (samr.gov.cn)

²⁹⁷ The CDR bodies must apply for funding annually to DGC (P), the approved amount of which are based on the number of cases handled annually. DGC (P) also provides technical support and training (ICPEN Portugal 2022: DGC (P)). See Section 3.7.2 for details.

²⁹⁸ The KCA provides a three-stage CDR procedure: consumer counseling (provision of information on dispute relief process), damage redress (recommended reconciliation between the consumer and the business) and dispute settlement (quasi-judicial dispute relief system). In 2021, KCA settled 37,047 cases (86.5 per cent resolution rate) and recovered KRW 31.8 billion in economic losses for consumers via recommended reconciliation for 42,845 cases (Republic of Korea 2022: Survey).

²⁹⁹ Including Financial Disputes Mediation Committee (under the Financial Supervisory Service), E-Commerce Mediation Committee (under the Korea Internet and Security Agency), Personal Information Mediation Committee (under the Personal Information Protection Commission), Content Dispute Resolution Committee (under the Korea Creative Content Agency), and Korea Medical Dispute Mediation and Arbitration Agency.

the market. The remaining 80 to 90 per cent come from private sources including case fees, where both business (EUR 25 or more per case) and consumer (EUR 25 to EUR 150 per case, refundable if the claim is upheld) are charged a case fee.³⁰⁰

Publicly funded initially but self-funded later (statutory, legal rights to collect fees)

This practice of combining government funding with case fees has been noted as an alternative to fully subsidized CDR, as the World Bank notes, “Government funding may be constrained. Industry funding can comprise a levy on all financial businesses, case fees payable by financial businesses that have cases decided by the ombudsman or a combination of the two.”³⁰¹

The government of the United Kingdom initially funded FOS with an ‘establishment expenditure’ of GBP 2.9 million when it was set up in March 2000.³⁰² Subsequently, a self-funded model allowed FOS to become self-sufficient through levy and case fees it receives via the regulator.³⁰³ As the FOS no longer receives funding from the government, this allows it to maintain its operational independence. As a statutory CDR established by the parliament, FOS was granted legitimate rights to collect fees from businesses for its operating costs, based on the law.³⁰⁴ Therefore, all financial businesses that are covered by FOS and regulated by FCA pay an annual levy,³⁰⁵ and each business is entitled to three free dispute claims per year, above which GBP 750 is charged for each case.³⁰⁶ This incentivizes businesses to avoid case fees by resolving disputes early before they get escalated to FOS.³⁰⁷ All in all, the funding and business model of FOS contributes to its operational quality and institutional stability.³⁰⁸

³⁰⁰ For details, see Section 3.6.1.

³⁰¹ World Bank (2012). Resolving disputes between consumers and financial businesses: Fundamentals for a financial ombudsman, p. 7. Available at: [World Bank Document](#)

³⁰² Page 18, available at: <https://www.financial-ombudsman.org.uk/files/2005/ar-1999-2000.pdf>

³⁰³ FOS (2021: Interview). See Section 3.8.1 for details about FOS.

³⁰⁴ Section 230, Costs and Section 234, Industry funding of the Financial Services and Markets Act (2000). The aims for providing FOS with legitimate rights to collect fees is that FOS need to provide access to a free, independent dispute resolution service in order to for the public to have confidence in financial services. As such, businesses, not their customers, should meet the costs of resolving complaints. See: [Governance and funding \(financial-ombudsman.org.uk\)](#)

³⁰⁵ Ranging from GBP 45 a year for a small financial advice business to over GBP 1 million for a high-street bank.

³⁰⁶ See: <https://www.financial-ombudsman.org.uk/who-we-are/governance-funding> and <https://www.financial-ombudsman.org.uk/businesses/resolving-complaint/case-fees>

³⁰⁷ [Governance and funding \(financial-ombudsman.org.uk\)](#)

³⁰⁸ In terms of reduced financial constraints and institutional stability, FOS had nearly 3000 employees between 2020 and 2021. Their operating income was GBP 245.6 million, of which GBP 96 million came from compulsory jurisdiction levy, GBP 1 million from voluntary levy, and the rest from annual fees ([Financial Ombudsman Service Annual Report and Accounts 2020/21 \(financial-ombudsman.org.uk\)](#)). The operational quality is reflected in their upheld rate and user feedback: FOS resolved 218,740 consumer complaints between 2021 and 2022; 90 per cent of consumers were aware of them and 78 per cent of the public trusted them ([Annual complaints data and insight 2021/22 \(financial-ombudsman.org.uk\)](#))

5. CONCLUSIONS

The key findings and analyses from the foregoing chapters are summarised below to highlight the dynamic evolution of CDR in the world and where it could be headed – towards a globally coordinated CDR ecosystem.

At the global level, the lack of a robust international legal framework for CDR is hindering the aspiration of developing a common, global CDR platform. Particular attention is given to the complexities of applying private international law to CDR. This highlighted the interest in harmonizing and modernizing applicable law at the global level, by integrating consumer law and contract law, so that it can serve as a reference for member States when devising and operating cross-border CDR.³⁰⁹

At the regional level, the European Union is making good headway in their cooperation on a unified legal and regulatory framework, as well as policy coordination, capacity building, and knowledge sharing. At the national level, the varied state of digital and CDR developments shows that progress is being made but much work remains. That solution cannot be one size fits all, but many approaches suited to various realities. Despite these differences, member States face similar challenges in organizing and operating effective CDR.

The good practices found globally sought to provide some inspirations from the valuable lessons learned from the international CDR community. By shedding light on the interrelated and shared challenges, it is possible to reach a nuanced understanding of the deeper root causes that underly them and the far-reaching implications on a societal level, some which may not be immediately obvious. These include selected challenges and practices in the

areas of sustainable funding and organizational viability for CDR institutions; the lack of consumer awareness and its impact on CDR effectiveness; the loopholes that perpetuate businesses' reluctance to participate in CDR; the real culprit behind lack of business compliance with CDR outcomes and how it compounds consumer frustration; and the systemic barriers and legal complexities that prove debilitating for effective cross-border CDR.

The key to good CDR schemes is how consumer-centered and user-friendly they are. CDR mechanisms should be expeditious, fair, transparent, inexpensive, and accessible. There are at least three reasons for this:

1. Delivers access to justice

In many parts of the world, consumers often forego pursuing justice due to lack of effective and efficient CDR. They are discouraged and deterred from pursuing pricey, complicated, time-consuming CDR systems. This deprives the consumer of their right to obtain redress (Section F, guidelines 38 and 40, UNGCP 2016).

2. Builds consumer trust in digital economy

UNCTAD research (UNCTAD, 2021) has shown that when a dispute is resolved effectively, quickly, and satisfactorily, the consumer is more likely to return to the business. The cumulative positive CDR experiences across societies can boost consumer confidence in businesses and trust.

3. Saves judicial resources

Since most consumer disputes involve low value claims, they are often suitably diverted from court to CDR scheme. Due to the uncomplicated nature of consumer cases, that they are relatively easy to classify and can usually be resolved by trained case handler. This helps to better allocate limited judicial resources for more complicated cases.

Out of the findings, analysis and discussions, this report provided at several policy considerations, which are outlined below.

As many countries already have national CDR frameworks and systems that are operational, these

³⁰⁹ The recent UNCTAD Consumer Protection E-Commerce Cross Border Cooperation Report (2022) reported that seven out of 11 countries surveyed voiced the need for global model law. The Report was produced by the UNCTAD informal working group on consumer protection in electronic commerce in June 2022. Further, as UNECE's (2022) Report 'Covid-19 impact on e-commerce' notes: 'The compatibility of cross-border legislation and standards as well as harmonization on a regional or global level, is important for the dynamic development of regional e-commerce in particular.' Available at: https://unece.org/sites/default/files/2022-01/ECE_TRADE_468E_1.pdf

considerations offer targeted insights that can be used to improve mechanisms for the delivery of CDR as needed or develop new ones in countries that lack such schemes.

Their aim is to elevate the effectiveness, speed, and quality of CDR, so that justice can be delivered to consumers in a way that is on par with the developmental pace of the global economy. Ultimately, the goal is to create viable CDR mechanisms globally, as a public good, that are grounded in robust policy and legal frameworks.

The considerations are as follows:

1. Deliver effective consumer dispute resolution for consumers, attending the special needs of vulnerable and disadvantaged ones.
2. Encourage the development of public and private CDR bodies while ensuring wide sectoral coverage.
3. Establish the objective quality criteria for CDR bodies to qualify as such, and a public reporting system that allows regular evaluation and monitoring by public authorities.³¹⁰
4. Encourage business participation in CDR and consider mandatory jurisdiction in appropriate cases.
5. Enhance consumer awareness of CDR through information and education campaigns, engaging all stakeholders.
6. Consider granting direct enforceability to the decisions of CDR bodies.
7. In the case of e-commerce, consider linking CDR bodies' decisions to payments systems to incentivize compliance by businesses.
8. Ensure sustainable sources of funding to CDR bodies, which can include public and private funding.
9. Foster international cooperation in the resolution of cross-border consumer disputes.
10. Strengthen international dialogues on CDR challenges and promote best practice sharing and international cooperation among stakeholders.

³¹⁰ Such as those identified by UNCTAD: accessibility, accountability, awareness, coverage, due process, effectiveness, efficiency, expertise, fairness, impartiality, independence, legality, transparency, voluntariness, and special consideration for the needs of vulnerable and disadvantaged consumers, op. cit. 48.

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