







Alternative Dispute Resolution in the Air Passenger Rights sector

ECC-Net Joint Project 2012

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Help and advice for consumers in Europe

ECC-Net

European Consumer Centres Network

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Introduction

The necessity and benefit of Alternative Dispute Resolution (ADR) entities for consumer issues is recognized today not only by consumer organizations, national authorities and European institutions, but increasingly in the business sector.

There is no longer the need to elaborate on the qualities of ADR, allowing consumers to find a solution with a trader and avoiding court procedures: rapidity, low costs, simplicity, etc.

Over the last years, the ECC-Net has received a steadily increasing number of complaints in the air passenger rights (APR) sector.

The existence of a well-functioning ADR entity would be a key for reaching a high number of mutually satisfactory solutions. This report therefore aims to establish a picture of the current situation regarding ADR in the APR sector and to develop recommendations.

The legal background for ADR in Europe has changed both with the directive on consumer ADR and the regulation on consumer ODR .

In the future, Member States should ensure a coverage of ADR for all consumer sectors, so including APR. It therefore seems necessary to update this report .

Also in several countries reflections are ongoing or procedures have been put in place to encourage recourse to ADR by recognizing them as a prerequisite for legal proceedings. For example in Portugal Law n.º 63/2019[1] published on the 16th of August 2019 introduced important modifications to national legislation on ADR. As of 15th September 2019, consumer disputes of low economic value (up to a maximum amount of 5000 €) shall be subject to necessary arbitration or mediation when, at the express choice of the consumer, they are submitted to an approved dispute resolution body in Portugal.

Consumers can be assisted by «advogado» (barrister) or a «solicitador» (member of the Solicitadores and Enforcement Agents National Association). If they can't afford legal assistance, they can apply for legal aid.

(1) https://dre.pt/home/-/dre/123962147/details/maximized

The ECC-Net's involvement in APR

The EU-wide network of European Consumer Centres (ECC-Net) in its current form exists since 2005. The network's objective is to strengthen the consumers' trust in the single market.
The network is co-funded by the European Commission (EC) and the Member States of the European Union (EU), Iceland and Norway. It is specialized in dealing with consumer requests concerning their rights within the EU and handles cross-border consumer complaints. Transactions in the APR sector are very often of a cross-border nature and therefore at the heart of the network's concerns and activities. The ECC-Net also provides feedback to national and EU stakeholders, based on practical experience. Since 2005, basically since the Montreal Convention[2] and especially the entry into force of Regulation 261/2004[3], the ECCs reported an increase in enquiries related to APR and in difficulties of resolving complaints. Several reports on this subject have been published[4]. The latest edition can be found *here*.

The ECC-Net statistics, based on the internal database "IT-Tool" managed by the EC, show that since 2010 approximately 20% of the network's activities concern APR.

2010 was a year marked by the volcanic eruption in Iceland and the closure of the EU airspace. It was also a year of heavy snows in winter. 2012 was a year marked by many insolvency procedures. However, and especially since not all complaints in the APR sector are linked to exceptional circumstances.

Nevertheless, the volcanic eruption in Iceland in 2010 and the following ash crisis allowed a first comparison of complaint handling by airlines throughout the EU, Iceland and Norway. Only 31% of the cases handled by the ECC-Net could be settled amicably[5]. This exceptional event was therefore a starting point for Member States to focus on the possibilities of ADR in this specific sector.

Furthermore, several enforcement authorities as well as airlines realized the necessity and benefits of this complaint-handling mechanism by creating or cooperating with ADRs. Indeed, ADR bears advantages for all sides; for consumers: a chance to find a solution instead of giving up on a complaint they might have (entailing all the negative impact this has on the confidence of consumers) or going to court (entailing a lengthy and complicated process); for airlines: being given the opportunity to demonstrate their interest in their customers' concerns ; for the enforcement authorities: being at the heart of citizens' concerns as well as balancing business interests.

(2) http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:165:0063:0079:EN:PDF

(3) Regulation (EC) No 261/2004 of the European European Parliament and of the Council of the 11th of February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91

(4) Air Passengers Rights Report 2011 – "In the aftermath of the Volcanic Ash Crisis", "Air Passenger Complaints Report 2006", "Air Passenger Rights: Consumer Complaints 2005: A Summary & Analysis of Consumer Complaints reported to the European Consumer Centre" :
https://www.europe-consommateurs.eu/fileadmin/user_upload/eu-consommateurs/PDFs/publications/etudes_et_rapports/3.4.1ECC-Net_air_passenger_report_2011.pdf
https://www.europe-consommateurs.eu/fileadmin/user_upload/eu-consommateurs/PDFs/publications/etudes_et_rapports/APR-report_2015-12-02.pdf

(5) Air Passengers Rights Report 2011 – "In the aftermath of the Volcanic Ash Crisis":
https://www.europe-consommateurs.eu/fileadmin/user_upload/eu-consommateurs/PDFs/publications/prises-de-position/APR-revision-positionpaper-ECCFRandDE.pdf

Air Passenger Rights remain a hot spot

Unfortunately, even though the ash cloud has dissipated for long, APR remain a hot spot in cross-border consumer complaints and the solutions proposed by many airlines are not entirely satisfactory as they do not take into account all the legal provisions that should be applied (Montreal Convention, Regulation 261/2004, the Court of Justice of the European Union (CJEU) "Sturgeon", and "Nelson", cases[6], etc.).

On the occasion of the celebration of the "20 years of the EU single market", passenger rights have been identified as one of the challenges for the future: " despite EU efforts to inform passengers on their rights and to monitor their enforcement, air passenger rights are often not well respected"[7].

Consumers therefore seek ways of redress other than the direct contact with an airline. Private claims companies have since invested the market. Hence court cases are in progress, also the European small claims procedure[8] is of help to some consumers[9]. However, most consumers continue to be reluctant to engage in a long judicial procedure and would prefer a simpler process arbitrated by an objective third party. The enforcement authorities are only of limited help as not all of them can handle individual complaints.

ADR coverage for APR cases throughout the EU

A Directive on consumer ADR[10] was to be transposed by the Member States by 9 July 2015. Several Member States have announced delays in the transposition, but, as stated by the Directive, "In order for consumers to exploit fully the potential of the internal market, ADR should be available for all types of domestic and cross-border disputes covered by this Directive".
This will hopefully lead to more consumers asserting their rights before qualified and efficient ADR bodies and strengthen consumers' confidence that complaining to sellers will lead to satisfactory outcomes. If a consumer's initial claim is not handled satisfactorily, they can go to an ADR to resolve the matter without launching legal proceedings.
Hopefully, airlines will give consumers' complaints proper consideration and demonstrate the industry's willingness to find amicable solutions out of court.

Aim of the study

The ECC-Net, rich with almost 15 years of experience in cross-border consumer issues, has decided to evaluate the current state of possibilities for ADR in the APR sector.

As a general remark, the ADR landscape varies considerably from one country to another and has not yet reached its full potential, especially in the APR sector.

This study highlights the ADR entities available in the APR sector all over the European Union, Iceland and Norway, compares practices and provides suggestions to improve the system and to better coordinate ADR with other stakeholders: National Enforcement Bodies (NEB), ECC-Net, European institutions, airlines and business from the travel sector and, of course, consumers.

(6) Judgment of the Court, 19 November 2009 in Joined Cases C-402/07 Christopher Sturgeon and Others v Condor Flugdienst GmbH and C-432/07 Stefan Böck and Cornelia Lepuschitz v Air France SA and Judgment of the Court, 23 October 2012 in Joined Cases C-581/10 Nelson and Others v Deutsche Lufthansa AG and C-629/10 TUI Travel and Others v Civil Aviation Authority

(7) http://www.singlemarket20.eu/challenges/overview/display?id=33

(8) Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European small claims procedure

(9) ECC-Net European Small Claims Procedure Report, September 2012 http://ec.europa.eu/consumers/ecc/docs/small_claims_210992012_en.pdf

(10) Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC

Protocol of the study

ECC France and Germany were project leader of this study in 2012 and sent out a questionnaire to get as much relevant information as possible on ADR entities in each Member State, Iceland and Norway, in order to compare the different characteristics. The 2015 edition of the ECC-Net APR report under the lead of ECC Sweden has been taken as an opportunity to update this report. And the ongoing audit of the European Court of Auditors has been taken as an opportunity for a new update. 30 ECCs participated in the compilation of this report, 24 have updated their input in summer 2019. Austria, Belgium, Bulgaria, croatia, Cyprus, Denmark, Estonia, Finland, France, Germany, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, The Netherlands, Norway, Poland, Portugal, Romania, Slovenia and Sweden).

Abreviations

ADR = Alternative Dispute Resolution
APR = Air Passenger Rights
CAA = Civil Aviation Authority
CJEU= Court of Justice of the European Union
EC = European Commission
ECC = European Consumer Centre (ECC-Net)
NEB = National Enforcement Body
ODR = Online Dispute Resolution

Legal texts

- **Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004** establishing common rules on com-pensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of fl ts, and repealing Regulation (EEC) No 295/91
- **Convention for the Unification of Certain Rules for International Carriage by Air** (the Montreal Convention), 28 May 1999
- **Regulation (EC) No 2027/97 of 9 October 1997 on air carrier liability in the event of accidents**
- **Judgment of the Court,** 19 November 2009 in Joined Cases C-402/07 and C-432/07 ("**Sturgeon case**")
- **Judgment of the Court, 23 October 2012 in Joined Cases C-581/10 Nelson and Others v Deutsche Lufthansa AG and C-629/10 TUI Travel and Others v Civil Aviation Authority**
- **Directive 2013/11/EU on consumer ADR for effective, impartial and transparent ADR entities for all kinds of consumer disputes**
- **Regulation No 524/2013 on online dispute resolution for consumer disputes - online platform for resolving consumer disputes about online purchases in another EU country**

The European Consumer Centres France and Germany led this project in 2012 and updated the ADR information in summer 2019.
The views and interpretations reflected in this report are not those of the European Commission or the national funding bodies. They are solely those of the working group based on conclusions in the reports cited and on the data and questionnaire answers submitted to the working group by all project participants. This document is intended to give an overall picture of the ADR landscape in the Air Passenger rights sector at the moment of publication.
It has no legal value however and the working group will not be held liable for any loss or cost incurred by reason of any person using or relying on the information in this publication of any person using or relying on the information in this publication.



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1. ADR schemes in the European Union, Iceland and Norway

The first result of this study reveals that there is no common ADR scheme in the APR sector within the European Union, Iceland and Norway. As in other consumer sectors, the setup of ADR depends on the national context of each country, established in accordance with its own habits, administrative organization, consumer representation schemes, etc.

This study tries to outline the major trends to be observed when looking at the different ADRs existing in the APR sector.

1.1. Different types of ADR schemes if an ADR exists to handle cross-border APR cases

List of ADR schemes for APR

The list of ADR bodies can be found at the end of this report, *page 28*.

Countries with no ADR	Croatia, Czech Republic, Ireland, Slovakia
ADR with a general competence, not only for APR or travel cases	Austria (residual ADR "Verbraucherschlichtung Österreich"), Belgium, Cyprus, Denmark, Estonia, Finland, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Poland, Portugal, Romania, Sweden, Slovenia, Spain, The Netherlands, United Kingdom
ADR for the Travel sector including APR disputes	Belgium, Denmark, France, Iceland, Norway, Luxembourg
ADR for air passenger rights disputes	Bulgaria, Germany, Norway, Poland
ADR for passenger rights disputes	Austria, Germany
ADR procedures for passenger rights disputes supplied by NEBs	Austria, France, Iceland

• Countries with no ADR at all:

Some countries do not have an ADR able to handle APR cases. These countries are Croatia, Czech Republic, Ireland and Slovakia. Consequently, in these countries, consumers do not have any access to an ADR entity in the APR sector. If they have a complaint, they will have to turn directly to the company or invoke a court procedure to try and enforce their passenger rights.

• ADR with a general competence, not only for APR or travelcases:

Many EU countries as well as Iceland have an ADR entity with a general competence which therefore also includes disputes concerning APR.
In Austria, APR cases not based on Regulation 261/2004 or Regulation 1107/2006 as well as cases based on these regulations but due to geographical details of the specific flight segment not falling within the competence of the ADR-body specific for passenger rights, the apf (see below), are dealt by the Austrian residual ADR-Body (Verbraucherschlichtung Österreich) as long as the consumer is living in the EEA and the airline has a branch office in Austria.
Belgium since 1st June 2015 has set up a residual ADR entity.
Cyprus, Denmark (Center for Complaint Resolution), Finland, Greece, Hungary (except for financial disputes), Italy with "Risolvi Online", Latvia, Lithuania, Luxembourg, Malta (Complaint and Conciliation Residual ADR), Poland, Portugal, Romania, Slovenia, the Netherlands with the "Geschillen-commissie Algemeen" of the Foundation for Consumer Complaints Committees (SGC) and UK with the Centre for Effective Dispute Resolution CEDR and the Ombudsman Services Ltd).

In Sweden, even though the consumer must turn to a general ADR entity which can intervene in any consumer sector, the ADR provides a specifi travel department, handling travel related cases including APR cases.

In Estonia, even though a general ADR is provided for, consumer complaints under regulation 261/2004 which has a direct effect, are not handled in the ADR system, but only by the NEB.
The Estonian NEB has a competence to make binding decisions in individual cases under regulation 261/2004.

1 NL: Functioning of the former Complaint Board for APR claims in The Netherlands

On January 1st 2012, the activity of the Consumer Complaint Board for Aviation stopped its activity due to the Dutch Board of Airline representatives (BARIN) withdrawing its cooperation. This ADR was notified with the European Commission and every Dutch airline company was participating in the ADR process, even the low cost airlines (all members of BARIN). The Complaint Board worked with a Commission of which half of the representatives were consumers and the other half consisted of representatives from airlines. The ADR decision was binding for the companies. The board published several of its decisions, guaranteeing that the parties remain anonymous. The role of this Complaint board was distinct from the role of the NEB.
Restrictions: this procedure was not free of charge for consumers and the competence was limited to incidents based in the Netherland, meaning, for example, that the cancellation or delay of the flight must have occurred at a Dutch airport.

2 Example of a specific ADR for APR claims: Flyklagenemnda in Norway

Norway is one of the only countries to have a specific ADR for air passenger claims, competent for disputes relating to scheduled air traffic. However, it can also handle claims against travel agencies or airports if they are linked to the application of the EU Regulation 261/2004. This ADR was established by a public initiative and is notified with the European Commission. The Board is financed by a fee imposed by the Ministry of Transport, which is paid by all airlines operating from Norwegian airports. In 2009, the fee was 0,20 NOK (approx. 0.03 €) per passenger travelling from a Norwegian airport. The procedure is free for consumers. The airlines participate in the procedure. The consumer invokes the procedure with his claim; the secretary of the Board asks for the airline's position. The answer is communicated to the consumer for comments and then the whole file is submitted to the Board for a decision, which will be communicated to each party. The decision is not binding for the airline but in case the airline does not adhere to it, the case is published in a specific section on the Board's website.
During the procedure, in order to complete the file before coming to a decision, the ADR can benefi from the expertise and cooperation of the NEB (CAA) in Norway.

3 Example of an ADR set by an airline: Alitalia's mediator

This is the only example among all of the European airlines in which a company had set up a Mediation service for its customers. Alitalia had signed a complaint handling protocol with the major Italian consumer associations. The conciliation was managed by the signatory consumer associations and the airline.
With the help of the ECC Italy, the scheme had been improved over the years. At the beginning the independence of the scheme has been discussed but in 2011 the Resolution of the European Parliament on ADR affirmed that the example of the Italian 'joint conciliation' is a possible best practice model. Therefore the ADR has demonstrated its genuineness and effort in regard to the handling of cases and in helping consumers find amicable solutions in cases where the customer service has given a negative answer to the consumer or has not answered the consumer's complaint within a pre-established time limit.
Advantage: transparency for the consumer by the written rules of procedure and amicable settlements. This ADR scheme has recently been recongnised in Italy in occasion of the implementation of Directive 2013/11/ UE.
Unfortunately this mediation service doesn't operate anymore.

In Slovenia, the European centre for dispute resolution (ECDR) was established in 2012 on a private initiative and is notified to the European Commission. ECDR has general competence and covers also B2B cases. It foresees a special procedure for consumer disputes: a confidential written proceeding for the resolution of domestic and crossborder consumer-related disputes.

In Portugal, the competence of the ADR entity is limited to a specific region.

The Polish Provincial Inspector of the Trade Inspection Authority operates as ADR with a general competence, and handles all cases which are not covered by sectorial ADRs (thus all other cases against airlines outside of the scope of Regulation 261/2004, see below on the competency of the Passengers' Rights Ombudsman). The complaint should be addressed to the Provincial Inspector of the Trade Inspection Authority depending on the place of the trader's business activity (usually it is the trader's registration address).

In some cases its competence depends on the value of the complaint (Denmark (Center for Complaint Resolution Consumer Complaints Board) and Portugal).

The Swedish ADR has value limitations. For a claim to be tried it must exceed certain value limitations, for travel issues in general the amount is 1 000 SEK. For disputes regarding passenger rights according to a number of EU regulations the amount is 500 SEK (air, train, boat and bus). If a dispute is of a principle nature or if there are other special circumstances, the Swedish ADR can choose to try the dispute despite the claim being below the value limitations. REMOVED: «Furthermore there will be a settlement phase before the cases will reach the consumer complaint board.» No information found about this at this time, therefore removed.

The competence of the CACCL (Centro de Arbitragem de Confl os de Consumo de Lisboa), for example, is limited to the metropolitan area of Lisbon and to consumer complaints of under 5000 € (there is also a national arbitration center, with no limit for the complaint value and whose territorial competence covers the regions in the mainland and Azores Autonomous Region where there is no other competent arbitration center).

The ADR in Denmark is empowered to hear complaints relating to goods or services that cost at least 1050 DKK (Clothing 680 DKK). The value of complaint must not exceed 3000 € in Cyprus and 30 000 € in Germany (söp).

• *ADR schemes specific for air passenger rights disputes:*

Five countries have an ADR entity specifically dedicated to handling claims in the APR sector. Norway (see box 2), Bulgaria (Conciliation Commission for Disputes in the Air Transport Sector), Germany (Schlichtungsstelle Luftverkehr since 24th November 2014) and Poland provide an ADR which is exclusively competent in APR. The German public ADR Schlichtungsstelle Luftverkehr can only cover claims in which the consumer couldn't find a solution, with a value of claim of more than 10 € and not more than 5000 € (see also below) and in which German courts would be competent to rule the case. The case needs to concern either regulation 261/2004 or the Montreal convention (denied boarding, cancellation or delay of transport services, delay or loss of luggage) and/or obligations with regard to passengers with reduced mobility. Cases involving taxes or fees for example cannot be brought before this ADR.

The Polish Passengers' Rights Ombudsman deals with resolving civil law disputes concerning pecuniary claims arising from the provisions of Regulation 261/2004/EC or Regulation 2111/2005/EC. Proceedings concerning disputes arising from Regulation 261/2004/EC are related to flights from airports located on the territory of the Republic of Poland serviced by EU air carriers as well as flights from third countries to these airports serviced by EU air carriers.

• *ADR procedures specific for Air Passenger rights disputes supplied by NEBs:*

In Spain, AESA is the competent ADR for APR which is also the designated NEB.

In Austria, the Agency for Passenger Rights (apf) is situated as a department under Schienen-Control. It is the statutory arbitration and enforcement body for rail, bus, air and ship transport. Since 28th May 2015, if a consumer can't find a solution with the transport company involved,

he/she can turn to the apf. The apf is free of charge for the consumer.
In the framework of its arbitration activities it is responsible for clarifition of passenger complaints, using out-of-court dispute resolution, and helps passengers obtain justice in their dis putes. In its function as an enforcement body, «apf» audits compliance with passenger rights groun-ded in EU regulations in rail, bus, air and ship transport[11].

The apf however only handles cases based on Regulation 261/2004 or Regulation 1107/2006 regarding flight segments departing or landing in Austria or flights operated by Austrian air carriers.

In Finland, the tasks are divided between 3 stakeholders:

- The Finnish Competition and Consumer Authority/Ombudsman

The Authority supervises compliance with consumer protection legislation and consumer rights in general. The Authority /Ombudsman supervises, among other things, the marketing and contract terms of airlines operating in Finland. The Authority /Ombudsman does not process individual disputes.

- The Consumer Disputes Board

The Board issues recommendations concerning individual disputes in Finland. But the Board does not have the possibility to sanction airlines - that is in the hands of the the Authority/ Ombudsman only and for the purposes of collective consumer protection.

- Finnish Transport Safety Agency (Trafi)

The Finnish Transport Safety Agency handles complaints made by business travellers and cases regarding rights of disabled passengers and passengers with reduced mobility.
Trafi is also responsible for supervising safety in air transport.

It is the same also in Sweden where the tasks of the NEB in Sweden are divided between 2 stakeholders:

- The Swedish Consumer Agency (SCA)

The SCA supervises compliance with consumer protection legislation and consumer rights in general, as for example the marketing and contract terms of airlines operating in Sweden. The SCA does not process individual disputes.

- The National Board for Consumer Disputes (ARN)

The National Board for Consumer Disputes (ARN) is a public authority that functions roughly like a court. Their main task is to impartially try disputes between consumers and business operators. Claims are filed by the consumer and they must be made in writing. Before the complaint is fi with ARN, the business operator must have rejected the complaint in part or in whole (or not answered at all). ARN submits recommendations on how disputes should be resolved. The recommendations are not binding, but the majority of companies follow them. It usually takes about six months from the claim to a decision. ARN's inquiry is free of charge.

In France, a service of the CAA (DGAC) offers an ADR procedure for passengers. The French DGAC which has also the role of the NEB offers a conciliation/mediation board for air passengers. In its function as NEB the DGAC sends an analysis of the case to the consumer, so that he/she receives the reasoning and appreciation of the NEB. The NEB may sanction in the collective interest of passengers but individual cases can also be dealt with in mediation/conciliation (see also page 12-13).

- *ADR entities specific for passenger rights disputes:*

In Austria consumers can turn to the "apf" (see above). In Germany, the private ADR "söp"(Conciliation Body for Public Transport) is competent if the value of complaint does not exceed 30 000 € and the airline is affiliated with söp.

Both ADRs can handle cases concerning rail, coach, maritime and air passenger rights. To avoid overlapping, the German ADR "Schlichtungsstelle Luftverkehr"handels only APR cases against airlines not affited to the "söp".

(11) http://www.apf.gv.at/en/organisation.html

4 AT : Agentur für Passagier- und Fahrgastrechte (apf)

The Agency for Passenger Rights (apf) is situated as a department under Schienen-Control. It is the statutory arbitration and enforcement body for rail, bus, air and ship transport. Since 28th May 2015, if a consumer can't find a solution with the transport company involved, he/she can turn to the apf. The apf is free of charge for the consumer.

5 FR : La Médiation Tourisme et Voyage in France

Three federations of the tourism sector decided, in 2011, to set up a common ADR service. The Federation of travel agencies, tour operators and air carriers consulted with representatives from consumer associations, including the ECC France.
Members of the federations are committed to the ADR, so they must answer the ADR's questions and requests that are necessary to handle a case and to make a decision. The ADR can also handle claims against traders who are not part of one of the federations, but only if this trader voluntary accepts the ADR process.
The decision is not binding. The ADR is financed by the federations; the procedure is free for consumers.

6 SE : Allmänna reklamationsnämnden (ARN) in Sweden

This public ADR with a general competence can handle any consumer claim (from banking to motor vehicles). The originality of this general ADR, however, lies in the specifi 13 departments. The travel department includes APR. . The roles of these two, the general ADR and the Swedish Consumer Agency (SCA) are clearly distinct as the SCA cannot handle individual cases.
The case is evaluated by a special board, which consists of representatives from both consumer organizations and trader organizations. The ECC Sweden cooperates with the ADR, referring cases to this authority as well as participating in the board as an expert in travel cases. The decision is not binding and the procedure is free for consumers.

Any case involving a member of the "söp" will be redirected immediately. And whenever a consumer complaint concerns the online booking process itself, the case could be handled by general ADRs such as the Online-Schlichter or the Allgemeine Verbrau-cherschlichtungsstelle (German residual ADR).

• ADR entities specific for the travel sector including air passenger rights disputes:

In six countries, ADR entities, specialized in the travel sector, have been set up and are also competent to handle claims involving APR (Belgium, Denmark (Package Travel Appeals Board), France, Iceland and Luxembourg). Nevertheless, specific requirements must be met:

- In Belgium and Luxembourg, the ADR can only intervene in disputes relating to package holidays, including the disputes involving transport services which are part of the package.

- In Denmark, the Danish Package Travel Appeals Board handles complaints regarding package holidays and transport services departing from Denmark and sold by a company based in Denmark. These ADRs can not intervene in cases concerning the purchase of flight only services. In Denmark, for flight only complaints, it is the competence of the general Center for Complaint Resolution.
- In Iceland and France, an ADR was created in the travel sector that includes APR. However, these ADRs can intervene only if the air carrier is a member of the trade associations having set up the ADR.

As overlapping with other sectorial specific ADRs may be possible, the travel ADR may have signed cooperation agreements with the others.
In France for example the MTV (Médiation Tourisme et Voyage) has signed such agreements with the ADR of the rail company SNCF and the French NEB.

1.2. Area of intervention in APR cases

It appears to the ECC-Net that, in general, even though the ADR is not specifically specialized in APR, any case based on Regulation 261/2004, the Montreal convention or the "Sturgeon" case law should be dealt with. However, some ADRs have restrictions concerning the legal sources they can apply.
Also, depending on the ADR entity, the ADR will either base its decision process exclusively on the legal texts and examine whether the trader has correctly implemented relevant APR legislation, or it will additionally take into account other ADR principles such as fairness and equity.

For example, the French ADR can handle cases in which the relevant APR legal texts were not applied by the airline. For the ADR decision, however, it will also take into account the arguments brought forward by the company to propose a compromise which might not meet the compensation or refund limits, provided for in the legal texts, to the full extent. The legal texts are a basis for negotiation in order to find a solution.

In most countries, ADRs apply all, for the consumers' complaint relevant legal texts (Austria, Belgium, Cyprus, Estonia, Finland, France, Germany, Hungary, Iceland, Italy, Lithuania, Luxembourg, Norway, Portugal and Sweden). The following table shows which specific APR legal basis the ADR in Latvia will not consider.

Legislation not taken into account by ADRs

Countries	APR source not applied by ADR
Latvia: ADR in Latvia considers Regulation 261/2004, but can not apply Montreal Convention.	Montreal Convention

ADR entities and financing

Countries with no ADR	Croatia, Czech Republic, Ireland, Slovakia
Private initiative	**Bulgaria (NAIS)**[12], **Cyprus, France** (initiative from traders (Federation of Travel agencies, Tour operator and French Airlines)), **Germany** (for the SÖP, it is a private initiative from traders which created this ADR and also finance it), **Iceland** (initiative from consumer associations and traders Federation), **Italy, Slovenia, United Kingdom.**
Private-public initiative	**Austria** (the scheme is primarily financed by the state but the airlines have to pay a certain amount per case as well), **Belgium, Germany** (for the Online-Schlichter, the initiative was private, but the ADR works thanks to public funds and also financial participation from some traders), **Luxembourg, Portugal** (the creation of the CACCL and CNIACC is due to a joint private and public initiative supported and financed partially by public authorities).
Public initiative	**Austria, Belgium** (the initiative of the creation was private, but the ADR has the financial support of the public autorities), **Bulgaria, Denmark, Estonia, Finland, Germany** (Schlichtungsstelle Luftverkehr), **Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Norway, Poland, Portugal, Romania, Spain, Sweden.**
Not available	The Netherlands

(12) The traders pay for the procedure if they agree to be part of it.

1.3. Creation of ADR schemes and financing of the system

On which initiative the ADR scheme was created and its funding is quite relevant in understanding why certain countries propose ADR schemes with a general competence and others offer specialized ADRs. It also allows for a better understanding of the decision-finding process.

Usually ADRs with a general competence were created by a public initiative (Ministry, public services, etc.) and specialized ADRs are often and initially formed by a private initiative (from traders or consumers associations) with occasional support from public authorities to maintain the service and to guarantee its efficiency or independence.

1.4. Notification of an ADR

The European Commission (EC) has drawn up a list of all the ADRs in every consumption sector that have been notified by the Member States as being in conformity with the EC Recommendations 98/257/EC[13] and 2001/310/EC[14] and therefore respect the following criteria:

- Independence
- Impartiality
- Transparency
- Adversarial principle
- Effectiveness
- Legality
- Liberty
- Principle of representation
- Fairness

Being part of the main ADR schemes in their respective countries, the ADRs with a general competence are usually notified to the EC as being in conformity with the above mentioned recommendations.

Regarding specialized ADRs for the travel sector or APR, the Icelandic ADR is not notified.

Nevertheless, the ECC Iceland works with them on a regular basis as the ADR respects the EU recommendations on ADR. According to ECC Iceland, the Icelandic ADR would only need to make minor changes in order to be notified.

Beside the above mentioned exception, all the other ADRs coming from private initiatives are notified.

The Directive on consumer ADR was to be transposed in the Member States by 9th July 2015. Several Member States have announced the transposition to be delayed but in the end "ADR should be available for all types of domestic and cross-border disputes covered by this Directive. ADR procedures should comply with consistent quality requirements that apply throughout the Union, and consumers and traders should be aware of the existence of such procedures."

1.5. ADR and/or NEB

Article 16 of Regulation 261/2004 requires each Member State to designate a "body responsible for the enforcement of this regulation"[15].

The European Commission has published a list of these National Enforcement Bodies (NEBs), nominated by each Member State of the European Union, Iceland, Norway (and Switzerland), which have the power to enforce Regulation 261/2004[16].

Generally, Member States designate the National Civil Aviation Authority (CAA) as NEB. In accordance with the national administration organization or the mission given to the NEB, some of these bodies are able to handle and to enforce cases individually (for example in Cyprus, Denmark,

(13) 98/257/EC: Commission Recommendation of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes

(14) 2001/31/EC: Commission Recommendation of 4 April 2001 on the principles for out-of-court bodies involved in the consensual resolution of consumer disputes

(15) Each Member State shall designate a body responsible for the enforcement of this Regulation as regards flights from airports situated on its territory and flights from a third country to such airports. Where appropriate, this body shall take the measures necessary to ensure that the rights of passengers are respected. The Member States shall inform the Commission of the body that has been designated in accordance with this paragraph.

(16) https://ec.europa.eu/transport/themes/passengers/air/doc/2004_261_national_enforcement_bodies.pdf

Estonia or Spain). In other countries, the NEB is entitled to intervene only on behalf of a common interest and to enforce the Regulation according to this common objective only.

In Poland, until 31st March 2019, the body responsible for the enforcement of Regulation 261/2004 was the Commission on Passengers' Rights within the Civil Aviation Authority.
The Polish NEB handled individual cases and an administrative decision was issued. Starting from 1st April 2019 the Polish Civil Aviation Authority can intervene only in the common interest. Individual cases based on Regulation 261/2004 can be submitted to the ADR body operating within the Civil Aviation Authority - the Passengers' Rights Ombudsman.

The situation appears to be quite confusing for passengers when the NEB also offers a kind of ADR service for individual claims such as the French NEB (DGAC) or the Romanian NACP.
In France, the DGAC (Civil Aviation Authority) was designated as NEB. According to the mission of the establishment as NEB, it has the power to enforce the Regulation and to sanction companies. Therefore, the DGAC intervenes in the general interest of passengers and cannot enforce individual disputes. But the DGAC has also developed an ADR service which is able to handle individual claims (see also page 9) but strictly on an amicable ground and solely to help consumers receive an answer from the airlines concerning their claim. The DGAC, as ADR, does not propose dispute solutions or confirms the proper application of the Regulation.

For consumers, the distinction between the different roles of the DGAC is not always clear: when contacting the DGAC, consumers always hope to get an individual enforcement of their claim. In its function as NEB the French CAA sends an analysis of the case to the consumer, so that he/she gets an analysis of the case including the reasoning and appreciation of the NEB. The NEB may sanction in the collective interest of passengers but individual cases can only be dealt with in mediation/conciliation. If the airline doesn't comply the consumer will have to turn to court.

A public consultation[17] confimed that passengers are often confused by the role of NEBs with regard to individual enforcement compared to general enforcement[18].

Sweden and Spain are also quite exceptional in the ADR landscape. In this country, a general ADR competent for APR is also designated as NEB (see also page 3 and 4).

1.6. Traders participation in the ADR procedure

- *Participation of Traders in the ADR procedure:*

One of the basic principles of ADR comprises that it is based on the good will of both parties - consumers and traders - to cooperate in finding an amicable solution to a dispute. The recourse to ADR is, in principle, not mandatory.
In some ADR entities, however, the traders have freely submitted themselves to the possibility of an ADR and have agreed to participate in any ADR procedure initiated by a consumer.
In six countries, respectively Denmark (Center for Complaint Resolution), Finland, Latvia, Norway and Sweden, the ADRs competence to rule is not dependent on the trader's acceptance to submit to an ADR procedure.

The participation of the traders in the ADR entities seems to be closely linked to the origin of the scheme, but also to its financing(see 1.3). For example, in Belgium (the travel ADR), Iceland and Luxembourg, the ADR entities were first initiated by a private initiative of travel agencies, not the national airlines. Therefore, only the travel agencies or tour operators have agreed to participate in these schemes, which are also partially financed by these traders.

(17) Public consultation on the possible revision of Regulation 261/2004 – results.
https://ec.europa.eu/transport/themes/passengers/consultations/doc/2012-03-11-apr-public-consultation-results.pdf

(18) Commission staff working document SWD(2013) page 16,
http://eur- lex.europa.eu/LexUriServ/LexUriServ.do?uri=SWD:2013:0062:FIN:EN:PDF

The French MTV was also created by a private initiative of travel agencies and tour operator federations but also by the association of French air carriers. Thus, nearly the whole travel sector participates in this ADR entity and process.

In Germany, airlines are obligated to participate in ADR procedures concerning the rights stemming from 261/2004 as well as the Montreal Convention (§§ 57 ff. LuftVG). However, even though a participation and payment of fees for the procedure are obligatory, the airline does not have to accept the ADR's proposal.
The German "söp" normally can only handle complaints against its members but it could successfully conciliate a number of cases with other airlines as well.
In cases where the airline is not affiliated to the "söp", consumers can turn to the public ADR Schlichtungsstelle Luftverkehrwhich acts as a residual ADR body in the field of APR.
For issues involving booking platforms the Online-Schlichter can be of help or the Allgemeine Verbraucherschlichtungsstelle.

According to Austrian law airlines are obliged to participate in an ADR-procedure (§ 139a, 1,2 LFG). If an airline fails to participate a penalty fee up to 22 000 € can be imposed by the competent public administrative body.
If an airline does not participate in the ADR procedure the file is closed by the apf and the case can be reported to the public body. The public administrative body competent to issue this fine was informed by apf 13 times in 2018.

In Lithuania, if a consumer submits a complaint against a Lithuanian based airline, the airline must participate in the ADR procedure.

In Hungary traders are generally obliged to cooperate during the ADR procedure. It means that upon being notified by the ADR body dealing with the complaint, the trader shall send a statement about its position to the ADR body and ensure the presence of a competent representative authorised to conclude a compromise with the complainant on behalf of the trader during the hearing before the ADR body. If neither the legal seat nor the official place of operation of the trader is located within the geographical competence of the ADR body conducting the procedure, instead of the physical presence of the tarder's representative, the trader is obliged to offer in writing the possibility to conclude a compromise with the consumer.
If the trader concerned breaches its legal obligation to cooperate, the ADR body informs the competent consumer protection enforcement body in order to initiate an official administrative procedure. The competent enforcement body shall impose an administrative fine on the trader in every case.

In the Netherlands a consumer can file a complaint at the Geschillencommissie Algemeen and the ADR body will then contact the airline. The airline company can decide to register at the ADR committee and to participate in the ADR procedure. If they do the outcome is binding.
Also in Cyprus, the ADR has to convince the airline to participate in the procedure.

In most countries the ADRs deal with national companies. In Denmark for example the ADR (Center for Complaint Resolution) can even handle complaints against foreign airlines. The same goes for the Swedish ADR, the National Board for Consumer Disputes (ARN). In Estonia the Consumers Dispute Committee handles only the disputes against traders whose place of establishment is in the Republic of Estonia (including the registered seat, the location of the manage-ment board or the principal place of business there of, including the location of the branch, representation or other undertaking, if the trader is a company or another legal person).
The German "söp" counts numerous foreign airlines amongst its members. The French ADR could also lobby foreign airlines who willingly submitting to the scheme. However the competence of the MTV only covers flights with departure from or arrival in France.

Participation of traders

ADR schemes in which the national travel industry participates (Airlines, Tour Operators and Travel Agencies)	France, Germany, Estonia,The Netherlands, Italy, Portugal, Hungary, Norway, Swenden, Finland, Latvia
ADR schemes in which national travel agencies or tour operators participate	Belgium, Iceland, Estonia, Luxembourg
ADR schemes in which airline companies participe	Austria, Bulgaria, Cyprus*, Germany, Denmark
No participation of carriers	Malta[19], Romania, Slovenia
Countries with no ADR	Croatia, Czech Republic, Ireland, Slovakia
Not available	Greece, Poland, United Kingdom

(*) To convince the airline to participate the procedure

(19) In general traders (airlines based in Malta) do not have an obligation to participate in an ADR scheme.



2. Relevant aspects of the procedures of the various existing ADR schemes in the APR sector

2.1 Existence of written rules and basic principles of the ADR procedure

• *A charter to organize the procedure*

As most of the ADRs (general or specific) are notified to the European Commission, it is quite natural that these same ADRs have written rules of procedure or a legal text which organizes their activities and the relation with the consumers.

• *Costs and fees*

Concerning fees, the majority of ADR entities are free of charge for consumers and traders regardless of the organizational background of the ADR. Some ADRs however ask for a fee from consumers, others from traders. In rare cases the procedure is with costs for both parties.
In the following countries the procedure is free of charge for consumers who will only bear their own costs (copies, postal or communication fees, etc.): Austria, Belgium (for the residual ADR), Bulgaria, Estonia, Finland, France, Germany, Greece, Hungary, Latvia, Lithuania, Luxembourg, Norway, Poland, Romania, Spain and Sweden.

In Portugal ADR bodies may charge a small fee for mediation (10 €), namely Centro de Arbitragem de Conflitos de Consumo de Lisboa, Centro de Informação e de Arbitragem do Porto, Centro de Arbitragem da Universidade Autónoma de Lisboa. Fees for arbitration vary between 10 € and 50 € according to the value of the case. Fees are published on the ADR bodies' website.

In Slovenia the procedure is free of cost for the consumer, the trader covers the administrative costs and the award for the expert. Costs relating to evidence are payable in equal shares.

In Belgium (for the travel ADR, 50 € for conciliation/ arbitration 50 € for complaints of less or equivalent to 1000 € and 75 € for complaints of more than 1000 €) and Denmark (21 €/37 €) consumers will have to pay a submission fee which will be recovered if the consumer wins the case or the case is dismissed.

In Italy, the fee of RisolviOnline is 20 Euro. The fee is due only if the trader accepts to take part in the proceeding.

In Hungary there is no submission fee but the consumer might pay justifiable costs of the proceeding if the case is lost.

In Cyprus the consumer must pay a submission fee between 5 to 17 € depending on the ADR and the claim and if the case is lost 85 to 170 € arbitrators fees, depending on the value of the complaint.

The German söp is financed by the airlines that are affiliated. They pay a fee for each pro-

cedure, no matter what the outcome is. At the Schlichtungsstelle Luftverkehr and the Allgemeine Verbraucherschlichtungsstelle traders pay fees per procedure. The Online-Schlichter is free for both parties. Any ADR is always free for the consumer.

In Norway, only the trader has to pay a fee for the mediation procedure (see box 3). In Iceland, where the ADR is initiated by a private initiative (consumer association and carrier federation), both parties have to pay a fee to participate in the procedure.

At the Dutch « Geschillencommissie Algemeen » traders pay a certain fee for the membership and consumers pay a fee per complaint.

At the UK Centre for Effective Dispute Resolution CEDR (Airlines) variable fees have to be paid by the consumer and the trader.
At the Ombudsman Services Ltd (Aviation) no fees have to be paid by the consumer and fixed fees have to be paid by the trader.

For procedures initiated at the Lisbon Autonomous Arbitration Centre, complaints with a value up to 200 € are free of charge in the mediation process. For values of more than 200 € a fee will be calculated depending on the value of the case.
In an arbitration procedure a fee is always due and dependent on the complaint value.

• Type of procedure: Online Dispute Resolution (ODR) or hearings

Most of the ADRs provide a distance procedure. In Slovenia for example the procedure can be entirely online based. Usually, this is concluded in writing and the parties do not have to be present at a hearing. The ADR will ask each party to present its position regarding the claim in order to form its opinion and to propose a solution. In some cases, the ADR will ask a third party to present an expert's opinion if this is necessary for a better evaluation of the case.

In a few number of countries, a hearing is organized to deal with the case in the presence of both parties. It can be observed that in these countries (Estonia, Hungary), the ADR has a general competence and was initiated by public authorities and, in case a foreign consumer cannot be physically present at the hearing, the ECC of these countries can generally help the consumer to be represented at the hearing.

Duration of case handling

Countries with no ADR	Croatia, Czech Republic, Ireland, Slovakia
3 months or less	Austria, Belgium, Bulgaria, Cyprus, Estonia, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Lithuania, Malta, Poland, Portugal, Romania, Slovenia, Spain
More than 3 months	Denmark, Finland, Norway, Sweden
Not available	Luxembourg, Poland, The Netherlands, United Kingdom

• Opportunity for an ADR to be provided with access to an expertise

Most of the ADR entities have the opportunity to seek expertise and/or expert opinions in order to propose an adequate solution (except Austria, Finland, Luxembourg and Sweden). In Sweden the board representatives often bring expertise to the procedure, especially the trader organization representatives from the airline industry. Mostly, an external organization (meaning that it is not an internal service of the ADR or of the trader) is commissioned with the expertise.
This is the case for the ADR in Cyprus, Denmark, Estonia, Latvia, Portugal and Norway. Often the ADR can contact the National Civil Aviation Body or the NEB to receive the analysis of an expert (for example in Denmark (Center for Complaint Resolution), Norway and Poland).

The Latvian CRPC can even seek an opinion or information from any competent body also abroad. In France, the MTV will ask the carrier for an expertise, which will not be communicated to the consumer because of a confidentiality agreement between the ADR and the traders.

In Belgium as well, the Commission for Travel can ask the tour operators and travel agencies to provide an expertise.

• Duration of case handling

The Charters set by ADR schemes foresee certain duration for the handling of the cases which are submitted for mediation or arbitration.
-> *see page 11*

• Report of activity

Most of the ADR schemes draft an annual report, providing statistics and the outcome of the work of the ADR. The decisions of the ADRs are rarely published and if they are, the names of the parties will generally be crossed out and the decisions published on the ADR's website, not in the annual report.

2.2. Language and translation

For the majority of the ADRs, the written rules of procedures do not foresee the possibility to submit a complaint or to handle a case in any other language than the official national language(s). For a few ADRs, English can be an option for cases involving foreign consumers, or they even may accept several other languages, depending on the human resources of the ADR.

In Belgium, Bulgaria, France Germany[20] and Romania, the submission to the ADR can be made exclusively in the national language. In Spain, the submission to the ADR can be made in the national language (Spanish) or English.
In Cyprus, Estonia and Hungary, in principal, the ADR procedure will be in the national language, but some ADRs may accept English (or German as well for Hungary). In Latvia, submission can be done in Latvian only and the recommendation will be taken in Latvian. If foreign consumers' cases are forwarded by ECC Latvia, then ECC Latvia helps with the necessary translations.

In the following countries the ADR will accept the national language(s) and English: Austria, Lithuania, Luxembourg, Poland[21], Portugal and Sweden (if the trader accepts a submission in English). The recommendation from the Swedish ADR will be given in Swedish. ECC Sweden will provide help to the foreign consumer or the ECC-office so that they will be able to understand the recommendation.

In Denmark, the Center for Complaint Resolution may accept a case filed in English or a Scandinavian language. The answer by the ADR, however, will only be provided in Danish.

In Iceland Icelandic and any other language agreed on with the ADR are possible.
In Norway as well, the board may accept a case filed in English or a Scandinavian language and there might be a short summary of the decision in English but mostly, the ECC Norway will ensure that the consumer ECC can understand the ruling.

(20) The German söp also accepts English https://soep-online.de/welcome.html

(21) In Poland, the submission to the Provincial Inspector of the Trade Inspection Authority can be made exclusively in the national language but the Passengers' Rights Ombudsman in Poland accepts cases submitted in Polish and English.

The UK Ombudsman Services Ltd (Aviation) accepts a variety of languages: Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Icelandic, Italian, Latvian, Lithuanian, Maltese, Norwegian, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish.

Regarding possible translations of the ADR decisions or communications from the ADR into other languages, only three ADRs are able to offer this service.

In Finland, the language of the ADR is Finnish and Swedish but in cases under Reg 261/2004, consumers can submit their complaints also in English; in such cases, the rulings will also be given in English.

"RisolviOnline", the general Italian ADR, established by the Milanese Chamber of Commerce, handles cases and provides answers to consumers in almost all EU languages, according to its procedural rules. Therefore ususally a translation of the decision is not necessary.

The Court of Arbitration in Portugal is able to translate its decisions into English.

So in most cases, a foreign consumer will be confronted with a language barrier in introducing or following his/her complaint.

Some ADRs exclusively address the decision to the involved parties. The consumer will then receive a ruling in the language of the ADR.
The intervention of ECCs as facilitators in this process[22] is therefore very helpful and smoothens the process.

• *Linguistic case handling within the ECC-Net:*

Whenever a consumer has a cross-border complaint, he/she can turn to the ECC in his/ her country of residence. The consumer ECC will examine the case and once all the documentation has been provided, the case will be sent via the Intranet"IT-Tool" to the country of the trader. If applicable, the consumer ECC will include a legal analysis, based on the national consumer protection rules. The trader ECC will contact the trader or, if possible, send the case to an ADR-body. Trader or ADR will be addressed in the trader country's language. Throughout the entire procedure, consumer and trader ECC remain at the disposal of the respective parties for further comments, enquiries or a follow-up of the case.

If the ADR renders a decision which is not in English or in the consumer's language, the trader ECC will provide at least a summary of the decision in English and the consumer ECC can translate it into the consumer's language (on the participation of ECCs in the ADR process, see 2.3).

• *ODR contact points*

Regulation (EU) No 524/2013 contributes to the proper functioning of the internal market, and in particular of its digital dimension by providing a European ODR platform ('ODR' platform) facilitating the independent, impartial, effective, fast and fair out-of-court resolution of disputes between consumers and traders online.

This platform links all the national ADR entities notified by Member States to the European Commission and operates in all EU official languages.

Article 7 of this Regulation foresees the establishment of a network of ODR contact points These contact points "shall provide support to the resolution of disputes relating to complaints submitted through the ODR platform" by facilitating communication "which may include, in particular:

(i) assisting with the submission of the complaint and, where appropriate, relevant documentation;
(ii) providing the parties and ADR entities with general information on consumer rights in relation to sales and service contracts which apply in the Member State of the ODR contact point which hosts the ODR advisor concerned;
(iii) providing information on the functioning of the ODR platform;

(22) In accordance with art 6 of the proposal for a Regulation on Consumer Online Dispute resolution and art 11 of the proposal for consumer disputes and amending Regulation n°2006/2004 and Directive 2009/22/EC

(iv) providing the parties with explanations on the procedural rules applied by the ADR entities identified;
(v) informing the complainant party of other means of redress when a dispute cannot be resolved through the ODR platform".

"The Member States may confer responsibility for the ODR contact points on their centres of the European Consumer Centres Network, on consumer associations or on any other body".
Many ECCs endorse this function:
https://ec.europa.eu/consumers/odr/main/index.cfm?event=main.complaints.odrList

Several ECCs have been designated by their Member States with the mission to act as an ODR contact point. As such they support the parties involved in a dispute submitted through the ODR platform.

2.3. Participation of ECCs in the ADR process

The current ECC-Net has been set up in 2005 by the merger of two existing networks: the network of the Euroguichets as information centres for consumers (since 1992[23]) and the EEJ-Net, competent for out-of-court settlements of consumer disputes, especially by promoting ADR (since 2001[24]). The recourse to ADR therefore is an integral part of the ECC-Net's work.

The ECC-Net is co-financed, through grants, by the Member States, Iceland and Norway and the European Union. The EU grants are provided on the basis of a grant agreement signed by the European Commission and the host structures of the ECCs and approved by the Member State's authority. The grant agreements include a Vademecum which sets out the global objectives of the ECC-Net.

Objectives 3 and 5 of the Vademecum provide that the ECCs help consumers with disputes and contribute to ADR /ODR activities by identifying the appropriate ADR, giving detailed information, transferring complaints to ADRs and following up, to the extent possible, the outcome of the case.
ECCs should ensure an efficient and effective cooperation with national ADR entities and assist the national authorities in the promotion of ADR procedures and the ODR platform.

In general, therefore, the ECCs work in cooperation with the national ADR bodies. Especially if the ADR has a general competence and can therefore handle many different types of consumer disputes, an ECC can quite regularly transfer cases to that ADR.

ECCs Austria, Belgium[25], Denmark[26], France, Germany, Greece, Ireland, Italy, Latvia, Lithuania, Norway, Poland and Spain would actively participate in the ADR procedure so that the communication can take place between the ECC and the ADR in order to overcome language barriers if the consumer is not able to fill in the ADR's form in the national language of the ADR or in English, where possible. In the other countries the ADR will communicate directly with the consumer.

Some ECCs have a more active role in the ADR procedure. Case handlers at ECC Sweden, for example, participate in board meetings as representatives for the consumer organisation side. The case handlers do not participate in resolving disputes where ECC Sweden has previously been involved, for instance when the dispute was referred to the ADR by ECC Sweden.

Two staff members of ECC Norway sit as members of the ADR board as representatives for the consumer organisation side.

The representative of ECC Estonia can participate in the hearing of the cases transmitted by the ECC to the general ADR, however APR cases tend to be handled by the NEB now in which's procedure ECC Estonia is not involved.

ECC Luxembourg signed memorandum of procedure with the two ADRs competent for air passenger rights in Luxembourg, which defines the cooperation between the ECC and the ADR.

(23) The Euroguichets were created in the early 1990s at the Commission's initiative in order to inform consumers about the possibilities of the internal market and consumers' rights.
(24) Council Resolution of 25 May 2000 on a Community-wide network of national bodies for the extra-judicial settlement of consumer disputes.
(25) Except for the travel ADR for which consumers need to pay a fee.
(26) Unless the consumer is confident in communicating in Danish or Nordic languages.

2.4. Binding aspect of the decisions

Whereas a consumer is always free to decide whether or not to accept the decision of the ADR or to pursue the case in court, in some cases the decision is binding for the trader.

If the company does not follow the decision or the notice given by the ADR (binding or not), in some countries it is possible to use this in court. If an ADR's decision can be used in a court procedure, it becomes part of the documentation of the file, but is, of course, not binding for the judge.

In Lithuania the ADR's decisions are now binding. In Slovenia, Cyprus and Portugal the decision is binding on both parties. In Portugal the decision by the ADR can be enforced as a court decision.

In a short time the Spanish AESA's decision will be binding.

In Denmark the general ADR decision will be presented to the trader who has 30 days to comply or to inform the board in writing it will not. If there is no information, the decision is binding and can be enforced by a bailiff. Non-compliance will result in name and shame. Concerning the Package Travel Appeals Board the decision can be used in court, but the judge is not bound by it.

In both Italian ADRs as well as in Iceland, the proposal of a solution from the ADR is formalized in a protocol which is signed by both parties and then constitutes a contract between the parties. This can be enforced in front of a court in case the company does not adhere to the agreement.

In Norway, without being binding, an ADR decision has a strong impact and can be considered as a source of law by the judge.

In Austria, the ADR's decision is not automati-cally binding. The ADR proposes a solution. Both parties can decide whether to accept it or not. Only if both parties agree to the proposal an extrajudicial comparison is concluded.

This is binding (like a contract). If an airline does not fulfill the agreement the consumer can file a claim. The court will confirm the extrajudicial comparison in his verdict which later on might be executed. So if the consumer and the airline agree to the ADR's proposal but the airline in fact does not fulfill it, the consumer can file a claim and have the court execute it.

In Belgium, the arbitration decision of the travel ADR is binding on the trader and no legal procedure is possible. In case of conciliation, if the parties reach an agreement, it will be binding.

According to the Bulgarian law the parties can provide executive power of the concluded agreement by presenting it before the civil court for approval.

In Estonia if a consumer turns to the general ADR the decision is not binding for the parties. If they do not agree with the decision, they can take the case to court. If the trader fails to comply with the ADR decision, the name of the trader will be published in the"black list" on the Consumer Protection Board homepage.

In Hungary, if the ADR's decision is only binding if the trader has notified the ADR entity, even before or during the proceeding, that it accepts it as binding. If there is no such notification then the decision is only a recommendation. In case of non-compliance of a recommendation by the trader, the ADR entity - after the notification of the consumer - shall be entiteled to publish a brief description of the case - without the name of the consumer - and outcome, within 60 days of delivery of the decision to the trader. In case of non-compliance of a binding decision or compromise the consumer can ask the court to declare the decision enforceable.

In the Netherlands the airline company can decide to register at the ADR committee and to participate in the ADR procedure, if they do the outcome is binding.

In Finland the decision is a recommendation and therefore not binding but there is a strong incentive for business compliance.

At the UK Centre for Effective Dispute Resolution CEDR (Airlines) and the Ombudsman Services Ltd (Aviation) the procedure is binding upon agreement by one or both parties.

The most significant decisions are published without the names of the parties but a Finnish consumer organisation publishes a black list of traders who have not followed the board's recommendations.

In Sweden, the consumer magazine "Råd & Rön", owned by the Swedish consumer organization (Sveriges Konsumenter), uses the ADR decision data to publish the names of the traders not complying with ARNs recommendations. This "black list" is given wide publicity in Sweden and provides a strong incentive for business compliance[26].

In France, the decision of the MTV is confidential and except agreement between both parties, it can not be used in a court procedure.

Binding aspect of the decisions

Countries with no ADR	Croatia, Czech Republic, Ireland, Slovakia
Decision not binding	Austria, Bulgaria, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Latvia, Luxembourg, Norway, Poland, Romania, Sweden, United Kingdom
Decision binding	Belgium, Cyprus, Lithuania, Portugal, Slovenia, The Netherlands, United Kingdom
Not yet	Spain

Possibility to use the ADR's decision in a judicial procedure	Austria - Denmark - Estonia - Finland - Germany - Latvia - Luxembourg - Norway - Portugal - Spain - Sweden - Romania
Impossibility to use the ADR's decision in a judicial procedure	France - Hungary[27] - Iceland - Italy - Lithuania - Poland

(26) Allmänna reklamationsnämnden (ARN) Box 174, Kungsholmstorg 5 - 101 23 Stockholm / Tel:+46 (0)8-508 860 00 / http://www.arn.se

(27) if the decision is non-binding, so in case of recommendations

2.5. Collective APR cases before an ADR

With several initiatives the European Commission has tried to increase collective redress mechanisms in the Member States. Collective ADR procedures could complement collective judicial procedures.

Collective procedures in the APR sector seem particularly relevant as a delay or cancellation of flight concerns all passengers of that same flight, a calculation basis also used by many NEBs when investigating the collective interest of such a case to decide upon a sanction.

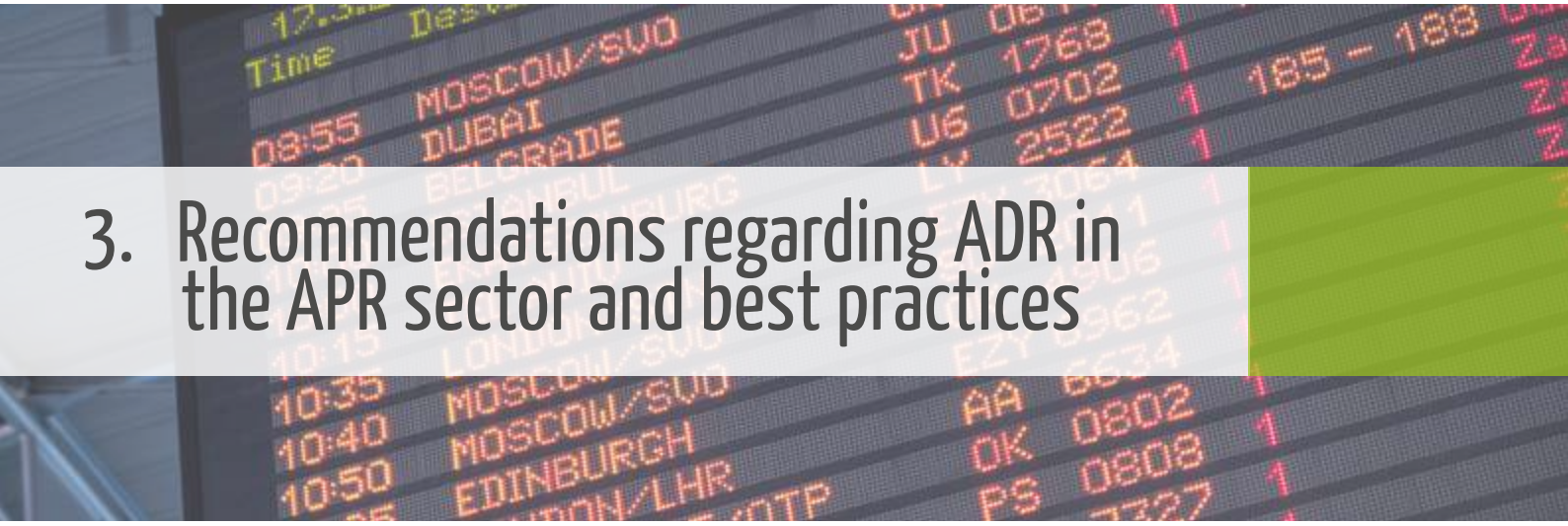
Few Member States allow for collective ADR procedures.

Theoretically in Finland group complaints can be put in motion by the consumer ombudsman who will fi an application to the Consumer Disputes Board (who has the role of the NEB).

Nevertheless no such case concerning APR has been filed.
If several individual cases concerning a specific flight are being handled by the ADR simultaneously, or if the ADR (in a plenary session) has already given a ruling regarding a certain flight, the other cases may be handled in a so called simple procedure.
In Sweden also collective cases can be allowed if consumers have claims against the same company based on very similar grounds. However this process is rarely used. The ADR always makes decisions in every single case, but some cases are based on previous judgements that are seen as precedent.

Also in Greece, Hungary, Iceland and Lithuania collective cases allow regrouping several consumers having complained against a same company. In Greece this procedure has already been used for APR cases.

In Latvia, Lithuania and Norway trying on test case may allow to establish precedent and the solution will then be applicable to all other identical cases.



3. Recommendations regarding ADR in the APR sector and best practices

Since the introduction of the single market, prices for tourism services have dropped considerably and with the arrival of low cost airlines, consumers travel more and more frequently by air. Complaints in the APR sector are constantly increasing (see introduction).
Unfortunately, amicable satisfactory solutions cannot be found in all cases and if the consumer cannot receive the automatic remedies, foreseen by EU law, directly from the airline or with the help of the ECC-Net, he/she should have the possibility to try an ADR procedure first. Court procedures may be considered in a second step as they are long and costly for consumers. Furthermore, as also applicable to an ADR procedure, even if a court sentence is obtained, the consumer needs to enforce it.
The reluctance of some airlines to apply the Sturgeon or Nelson case law dissuades many consumers from trying their case in court.

ADR therefore seems a more affable and practical solution, restoring, at the same time, trust with the consumers and enabling communication with the airlines.

In the current state, even though some countries have very efficient ADR schemes in the APR sector, the system is very diverse throughout Europe. In most countries, the NEBs usually do not have the mission or role of an ADR, i.e. helping to find an amicable solution in individual cases.

It therefore seems necessary to ensure that each Member State provides an ADR in the APR sector to ensure that individual consumer disputes are dealt with. The recent directive on consumer ADR and regulation on consumer ODR create incentives to ADRs.

ADR must remain a swift option, easily accessible for consumers and as far as possible free of charge so that it remains a viable option for passengers/consumers.
In order to use ADR in the APR sector to its full potential, the ECC-Net draws the following conclusions for recommendations:

- Transport services by air are often cross-border, either because of the destination or the nationality of the trader. Therefore, a full geographical coverage, with ADRs existing in each of the EU Member States, Iceland and Norway, would help promote ADR and compliance with APR. A full geographical coverage also makes sense in regard to the new project for a European ODR- platform. It appears that the principle mission of the platform is to provide information to consumers and refer them to the competent ADR bodies in each Member State.

- A close cooperation of ADRs and NEBs would allow a better monitoring of the sector. The proposal to amend existing rules on compensation and assistance for passengers and on air

carrier liability - 2013/0072(COD) is meant to "create more effective complaint handling-procedures and strengthen enforcement, monitoring and sanctioning policies[28]. "The European Parliament Committee on Transport and Tourism (TRAN) proposed amendments for the revision of the current regulation 261/2004 which consist in including ADR measures in the proposal by introducing clear reference to the ADR/ODR legislation and in detailing the roles of NEBs. The Council of the European Union went further by proposing in article 16 "The National Enforcement Body may also investigate and decide on enforcement actions based on information contained in individual complaints submitted by passengers ". Article 16 a foresees "Where the body or bodies designated under paragraph 3 are different from those entrusted with the enforcement of this Regulation under Article 16(1), they shall cooperate and exchange information."[29]

The existence of both ADR and NEB would help clarify the options available for consumers in their individual case and communication between both taking into account individual cases would help for effective complaint handling and enforcement.

Similar initiatives of providing ADR and enforcement have been taken in other sectors such as energy, for example: Directives 2009/72/CE (Electricity) and Directive 2009/73/ CE (Gas) provide that each Member State must create a specific agency to govern the sector and supervise the proper implementation of the EU rules.
The legal texts also determine that Member States should ensure an ADR entity which is able to handle consumer complaints with the providers. It is essential that ADR entities, the ECC-Net and NEBs work in close cooperation, each in its role, to provide sound advice and efficient help to consumers, to ensure the implementation of the EU regulations and to provide interpretations of the legal texts. Such a cooperation in each Member State, including the ECC-Net as a provider of communication and information between consumers and ADRs based in other Member States, is necessary to ensure the proper functioning of the internal market of air transport, not only for consumers but also among traders.

- Such a system in which ADRs and NEBs stronger cooperate would also allow ADRs, and thus consumers, to have access to specific technical information needed for the assessment of a case. ADRs as well as NEBs have very different levels of competence regarding technical matters related to airplanes or airports. Close cooperation would allow access to the necessary expertise, to assess extraordinary circumstances etc.

- A close cooperation between ECCs, ADRs and NEBs should also help to clarify the complaint system in which the consumer will have to submit his/her claim. Indeed, geographical competence is not the same, depending on the stakeholder the consumer will turn to:
Whereas the competent ECC to receive the consumer's complaint will be the ECC of his/her country of residence, the competence of the NEB is incident-based (country in which the cancellation or delay occurred). An ADR in most cases is competent for the airlines registered in its country, disregarding the nationality of the consumer.

Good practices

It seems necessary that the ADR body has a proper knowledge of APR issues in order to understand the problems linked to the implementation of the EU regulation or the Montreal Convention, even if the ADR is already notified with the European Commission for its general competence.

A good example is the Swedish Consumer Ombudsman (KO), whose core function is to represent consumers' interests in relation with businesses and represent consumers in individual cases and marketing issues. The KO has represented consumers in court cases concerning APR and is therefore familiar with the particularity of this subject.

(28) http://www.consilium.europa.eu/en/policies/air-passenger-rights/
(29) http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%20 9820%202014%20ADD%201%20REV%20

List of the ECCs

European Consumer Centres' contact details are also available at:

https://ec.europa.eu/info/live-work-travel-eu/consumers/resolve-your-consumer-complaint/european-consumer-centres-network_en

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ECC Cyprus



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List of ADR entities

COUNTRY	ADDRESS
Austria	Agentur für Passagier- und Fahrgastrechte Bereich Flug Linke Wienzeile 4/1/6 1060 Wien http://www.apf.gv.at
Belgium	Commission Litiges Voyages/Geschillencommissie reizen Boulevard du Roi Albert II, 16, 1000 Bruxelles Service de Médiation pour le Consommateur North Gate II Boulevard du Roi Albert II 8 1000 Bruxelles contact@mediationconsommateur.be http://mediationconsommateur.be/
Bulgaria	Sectorial conciliation commission for disputes in air transport sector Slaveikov square, 4a 1000 Sofia
Czech Republic	no ADR
Croatia	no ADR
Cyprus	Cyprus Consumer Center for Alternative Dispute Resolution Interdisciplinary Centre for Law, Alternative and Innovative Methods (ICLAIM) Arbitration procedures for settlement of consumer disputes 6 A. Araouzou 1421, Nicosia
Denmark	The Center for Complaint Resolution Toldboden 2 8800 Viborg Pakkerejseankenævnet (Package Travel Appeals Board) Røjelskær 11, 3. sal 2840 Holte
Estonia	Consumer Dispute Committee Pronksi 12 10117 Tallinn

Finland	Kuluttajariitalautakunta/ Consumer Disputes Board P.O. Box 306 00531 Helsinki *Telefon:* +358 29 505 3090
France	MTV (Médiation Tourisme et Voyage) BP 80 303 75 823 Paris Cedex 17
Germany	söp - Schlichtungsstelle für den öffentlichen Personenverkehr e.V. (Conciliation Body forPublic Transport) Fasanenstraße 81 10623 Berlin *kontakt@soep-online.de* Bundesamt für Justiz Schlichtungsstelle Luftverkehr Adenauerallee 99-103, 53113 Bonn Postanschrift: 53094 Bonn *Telefon:* +49 228 99 410-6120 *Telefax:* +49 228 99 410-6121 Online-Schlichter Zentrum für Europäischen Verbraucherschutz e.V., Bahnhofsplatz 3, 77694 Kehl *www.online-schlichter.de* Allgemeine Verbraucherschlichtungsstelle Straßburger Straße 8 77694 Kehl *www.verbraucher-schlichter.de* *mail@verbraucher-schlichter.de*
Greece	Hellenic Consumer Ombudsman (HCO) 144 Alexandras Avenue, Athens GR – 11471
Hungary	Arbitration boards operate in each county and in the capital of Hungary (altogether 20 bodies) *http://www.fogyasztovedelem.kormany.hu/node/8579* (in Hungarian)
Iceland	Úrskurðarnefnd Neytendasamtakanna og Samtaka ferðaþjónustunnar Hverfisgata 105, 101 Reykjavík
Ireland	no ADR
Italy	The Mediation Chamber of the Chamber of Commerce in Milan / Online Dispute Resolution Service "RisolviOnline" Via Meravigli 9/B 20123 Milano MI

Latvia	Commission for Solving the Consumer Disputes (Consumer Rights Protection Centre) Brivibas Street 55, Riga, LV-1010
Lithuania	State Consumer Rights Protection Authority ilniaus g. 25, 01402 Vilnius
Luxembourg	Service national du Médiateur de la consommation 6, rue du Palais de Justice L-1841 Luxembourg *Tel.:* 00352 46 13 11 *Fax:* 00352 46 36 03 info@mediateurconsommation.lu https://www.mediateurconsommation.lu/en Commission Luxembourgeoise des Litiges de Voyage (CLLV) 55, rue des Bruyères L- 1274 Howald *Telefon:* 00352 49 60 22 – 205 *Telefax:* 00352 49 49 57 contact@cllv.lu https://www.ulc.lu/fr/organes/detail.asp?T=1&D=descr&ID=5
Malta	Complaints and Concilaition Directorate (residual ADR) Mizzi House, National Road, Blata l-Bajda, Malta ADR Malta 202/2, Vincenti Buildings, Old Bakery Street, Valletta VLT 1453, Malta
Norway	Transportklagenemda Norsk Reiselivsforum P.O Box 2924 Solli 0230 Oslo
Portugal	Centro de Arbitragem de Conflitos de Consumo de Lisboa (CACCL) Rua dos Douradores, nº 108 - 2º e 3º - 1110-207 Lisboa Centro Nacional de Informação e Arbitragem de Conflitos de Consumo – CNIACC Av. da Republica n°44-3.° Esq.- 1050 - 194 Lisboa Centro de Arbitragem da Universidade Autónoma de Lisboa (Lisbon Autonomous Arbitration Centre) Rua de Sta Marta, n.º 56, Lisboa *Telefon:* +35123177603 centroarbitragem@autonoma.pt http://www.arbitragem.autonoma.pt

Poland	Passengers' Rights Ombudsman ul. Marcina Flisa 2 02-247 Warsaw, Poland https://pasazerlotniczy.ulc.gov.pl (website also available in English) Provincial Inspector of the Trade Inspection Authority Wojewódzki Inspektor Inspekcji Handlowej https://www.uokik.gov.pl/useful_links.php
Romania	National Authority of Consumer Protection in Romania - Directorate Alternative Dispute Resolution Bucureşti, Bd. Aviatorilor 72, sector 1 *Telefon:* +40 21 307 67 71 *Telefax:* +40 21 314 34 62 cabinet@anpc.ro
Slovakia	no ADR
Slovenia	European Centre for Dispute Resolution (ECDR) Tomšiceva ulica 6 SI-1000 Ljubljana *Telefon:* + 386 (0)8 205 65 90 *Telefax:* + 386 (0)1 244 99 95 info@ecdr.si http://www.ecdr.si/eng/home.html
Spain	www.seguridadaerea.gob.es/lang_castellano/home.aspx
Sweden	Allmänna reklamationsnämnden (ARN) Box 174 Kungsholmstorg 5 101 23 Stockholm
The Netherlands	General committee' (Geschillencommissie Algemeen) of the Foundation for Consumer Complaints Committees (SGC) Bordewijklaan 46 Den Haag, 2591RX Netherlands www.degeschillencommissie.nl/over-ons/commissies/algemeen/
UK	Centre for Effective Dispute Resolution CEDR (Airlines) 70 Fleet Street London, EC4Y 1EU United Kingdom info@cedr.com www.cedr.com *Telefon:* 02075366000 The Ombudsman Services Ltd (Aviation) PO Box 1263 Warrington, WA49RE United Kingdom complaints@ombudsman-services.org www.ombudsman-services.org/aviation.html



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Help and advice for consumers in Europe

ECC-Net

European Consumer Centres Network

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