

Romanian ABDRC's Settlement Procedure, Between Limited Redress, Funded Neutrality, and the Illusion of Zero Costs

Assistant Professor **Liviu Alexandru VIOREL**¹

Abstract

The paper maps procedural weaknesses in Romania's Alternative Dispute Resolution Center in Banking ('ABDRC') and, drawing on doctrinal analysis, shows how these vulnerabilities undermine consumer protection in practice. The analysis takes as its baseline the European Union standards set by Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes (the „ADR Directive”), and applies both logical and comparative methods (EU law vs. Romanian law; cross-jurisdictional comparisons vs. Romanian law). The study examines ABDRC's structural limits: a proclaimed gratuity confined to the procedural layer (e.g., persistence of ancillary costs), an appearance of neutrality derived from sectorial funding, restricted remedial competence (no power to determine the existence of unfair terms in banking contracts), admissibility filters, etc. These constraints weaken the effectiveness of consumer protection and reduce the predictability of outcomes; consequently, they (at least partly) account for ADRCB's low attractiveness among consumers and call for caution in assessing the procedure's capacity.

Keywords: ABDRC, neutrality, gratuity, triage, shortcomings.

JEL Classification: K15, K41

1. Preliminaries

The paper maps the procedural shortcomings in Romania's Alternative Dispute Resolution Center for Banking Disputes ('ADRCB') procedure and, drawing on doctrinal analysis, shows how these vulnerabilities undermine consumer protection in practice by resorting to logical and comparative methods (EU law–Romanian law; the law of other countries – Romanian law).

The promotion of the Alternative Dispute Resolution Center for Banking Disputes ('ADRCB') suggests that the Alternative Dispute Resolution ('ADR') entity is all sunshine and roses.

But how effective is this "pacifist" technique for settling disputes between banks and consumers?

The reality is that ADRCB's procedure suffers from structural inadequacies, half-truths, triage based on questionable cases of refusal to settle, lack of attractiveness, lack of remedies otherwise obtainable through traditional Courts, and structural problems.

As a rule, ADR mechanisms mainly target small claims² and have disadvantages

¹ Liviu Alexandru Viorel, Faculty of Law, Bucharest University of Economic Studies, Romania; ORCID: <https://orcid.org/0009-0004-2107-8859>; email: liviu.viorel@drept.ase.ro.

² Christopher Hodges, Iris Benöhr, and Naomi Creutzfeldt-Banda, "Consumer-to-Business Dispute Resolution: The Power of CADR," *ERA Forum* 13 (2012): 211, <https://doi.org/10.1007/s12027-012-0263-y>.

such as difficulties in predicting the outcome and sometimes poor transparency³.

Below, I will analyze some of the issues that I consider to be most important.

2. Mimicked free of charge

How "free" the ADRCB procedure is, is the question I seek to answer in the following lines.

The costs of litigation – especially high court fees – are considered in some states to be the main reason why consumers do not assert their rights in Court, especially when the value of the claim is low⁴; the costs incurred by the claimant are disproportionate to the amount they recover in a dispute brought before the Courts⁵, therefore, the financial investment is not worth the amounts of money obtained in the dispute.

According to Directive 2013/11/EU of the European Parliament and of the Council of May 21, 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No. 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR) (the "ADR Directive"), the ADR procedure must be free of charge or available at a low cost to consumers⁶.

Capitalizing the option provided for in the Directive – alongside most EU Member States, including Spain, Sweden⁷ and France⁸ – Romania chose to be prudent and safe by making the examination and resolution of disputes by the ADRCB free of charge⁹. The text emphasises: "only for consumers"; which seems to mean that it does not apply to banks as well. Thus, the ADRCB has an apparent advantage for consumers. However, because consumer claims in Court carry no procedural costs, ADR is not 'cheaper' than ordinary Court proceedings¹⁰; the absence of settlement fees therefore

³ Lucian Bercea, "Convergență normativă sau concurență normativă? Accesibilitatea procedurii insolvenței persoanei fizice și a procedurii de soluționare alternativă a litigiilor în domeniul bancar" [Normative Convergence or Normative Competition? Accessibility of Personal Insolvency Proceedings and Alternative Dispute Resolution in Banking], *Revista Română de Drept al Afacerilor*, no. 10 (2015): 85.

⁴ With reference to Portugal, Cátia Marques Cebola, "The Implementation of the Consumer ADR Directive in Portugal: Necessary Reform or Missed Opportunity?," in *The New Regulatory Framework for Consumer Dispute Resolution*, ed. Pablo Cortés (Oxford: Oxford University Press, 2016), 262, <https://doi.org/10.1093/acprof:oso/9780198766353.003.0013>.

⁵ Christopher Hodges, Stefan Vogenauer, and Magdalena Tulibacka, eds., *The Costs and Funding of Civil Litigation: A Comparative Perspective* (Oxford and Portland, OR: Hart Publishing, 2010), 35, referring to a study by the CMS Research Programme on Civil Justice Systems, Centre for Socio-Legal Studies, University of Oxford.

⁶ Directive 2013/11/EU, art. 8(c).

⁷ Hodges, Benöhr, and Creutzfeldt-Banda, "Consumer-to-Business Dispute Resolution," 213.

⁸ France, Ordinance no. 2015-1033 of August 20, 2015, on alternative dispute resolution for consumer disputes, art. L. 152-1, <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000031070940/> (accessed November 3, 2025). See also Emmanuel Guinchard, "The Implementation of the Consumer ADR Directive in France," in *The New Regulatory Framework for Consumer Dispute Resolution*, ed. Pablo Cortés (Oxford: Oxford University Press, 2016), 161, <https://doi.org/10.1093/acprof:oso/9780198766353.003.0008>.

⁹ ABDRC Regulation, art. 19(2). Portugal, by contrast, has opted to introduce such fees; see Cebola, "Implementation of the Consumer ADR Directive in Portugal," 262. This possibility is permitted by Directive 2013/11/EU.

¹⁰ Cătălin Gabriel Stănescu, "Consumer ADR in Romania," in *Consumer Alternative Dispute Resolution in Emerging Economies*, ed. Eda Şahin-Sengül and Serkan Kaya (London: Routledge, 2025), 117, <https://doi.org/10.4324/9781032689739-8>. Under Government Emergency Ordinance no. 80/2013, art. 29(1)(f), the following are exempt from the judicial stamp tax: "actions and requests, including those for the exercise of

offers no real incentive to choose ABDRC over the Courts.

But how "free" is "free" when the consumer has to pay the lawyer's fees? It is true that legal assistance or representation is not required before the ADRCB; but because it can be difficult for consumers to confront a trader who has legal representation¹¹, paying for their legal representation can be tempting. Unfortunately, only the service is only free of charge, not the costs involved in the procedure, such as lawyer's fees¹². However, in ADR proceedings – *a.n. L.Al. Viorel* – and this also applies to ADRCB as well – to the extent that consumers need technical expertise, certified translations, or other means of evidence that involve costs, or choose to be assisted by a lawyer, the costs are borne by them regardless of the outcome of the proceedings¹³. This puts them at a disadvantage compared to the classic Court procedures, in which (i) they could request and obtain legal aid consisting of exemptions, reductions, rescheduling and/or deferrals, coverage of costs – *a.n. L.-Al.Viorel* with the inevitable shortcomings of this mechanism's effectiveness¹⁴ – and (ii) they could even obtain reimbursement of advanced legal costs for their lawyers to the extent that the Court finds in their favor¹⁵, of course under the conditions of the law.

Some consolation may come from the fact that, with each party bearing its own costs, the consumer does not risk finding themselves in the unpleasant position of having to reimburse any costs incurred by the bank with its lawyer.

Therefore, an in-depth analysis leads to the conclusion that free of charge is not exactly an advantage of ADRCB resolution as it might seem at first glance, at least when compared to the traditional alternative: (i) it is true that *there are no resolution costs* – but here, as anticipated, the procedure does not differ in any way from the procedure before the state Court, yet (ii) *the residual costs* are ultimately borne by the consumer, unlike the traditional Court option, for which a *priori* and a *posteriori* protectionist mechanisms exist.

3. Triage based on restrictive cases of refusal to adjudicate

The provisions of Art. 5 para. (4) of the SAL Ordinance and those of Art. 18 para. (3) of the Regulation on the organization of the Alternative Dispute Resolution Center in the Banking Field and the functioning of the coordination college¹⁶ ("ADRCB

ordinary and extraordinary remedies, relating to [...] the protection of consumer rights, when individuals and consumer protection associations are plaintiffs against economic operators who have harmed the legitimate rights and interests of consumers."

¹¹ Cebola, "Implementation of the Consumer ADR Directive in Portugal," 262.

¹² ABDRC Regulation, art. 1(6), expressly provides that consumers bear their own legal costs.

¹³ Stănescu, "Consumer ADR in Romania," 117.

¹⁴ The effectiveness of legal aid may be undermined by a lack of information about the mechanism, volatile or inconsistent case law, and excessive judicial discretion—factors that produce unpredictable results and, often, unforeseen costs for consumers. For a comprehensive overview, see Liviu-Alexandru Viorel, *Ajutorul public judiciar în materia taxelor judiciare de timbru: Garanție a dreptului de acces la o instanță* [Legal Aid in the Matter of Court Fees: A Guarantee of the Right of Access to a Court] (Bucharest: Universul Juridic, 2024), 869–86.

¹⁵ Stănescu, "Consumer ADR in Romania," 117.

¹⁶ Alternative Banking Dispute Resolution Centre (ABDRC), *Regulation on the Organization of the Alternative Banking Dispute Resolution Centre and the Operation of the Coordinating Board*, republication no. 2, approved by Coordinating Board decision of September 14, 2022, <https://csalb.ro/wp-content/up>

Regulation") provide for cases of refusal to resolve certain disputes.

In these cases, the sanction of inadmissibility applies. It should be noted that the application of these cases of refusal should not become an instrument of excessive filtering, but a genuine mechanism for consumer protection.

3.1. "The consumer has not attempted to contact the trader concerned to discuss the complaint and has not sought, as a first step, to settle the dispute directly with the trader"

In the drafting structure, this case is enshrined in Article 5(4)(a) of the ADR Directive and Article 18(3)(b) of the ADRCB Regulation. The ADR system for consumers operates as a second line, the first being the attempt to resolve the complaint amicably.

The ADR system for consumers operates as a second line of defense, the first being an attempt to resolve the complaint amicably¹⁷.

Theoretically, imposing the requirement to refuse resolution when the consumer has not attempted prior negotiation with the bank is intended to encourage the consumer to contact the trader to discuss the possible complaint with a view to resolving the dispute directly¹⁸, so as not to burden the ADR Center with unnecessary disputes that could be resolved through simple direct contact.

On closer inspection though, the reasoning is flawed: it is based on the assumption – rarely valid in practice – that individual negotiation, in conditions of asymmetry of power and information, would have a real chance of success. In most cases, the preliminary stage is formal and predictably unproductive, burdening the vulnerable consumer and fueling the (already sensitive) perception that the ADRCB *de facto* protects the trader. From a regulatory perspective, one can analyze the extent to which transforming "pre-contact" into a means of refusal conflicts with the accessibility and effectiveness standards of Directive 2013/11/EU (Art. 8), which calls for minimal, proportionate, and non-dissuasive formalities.

Unfortunately, with each additional preliminary formality, the „cost” of access increases, the effectiveness of the remedy decreases, and the ADR mechanism betrays its purpose: it becomes a barrier to entry, not a bridge to a solution.

It should be noted that this is a preliminary stage only for referral to the ADRCB, not for referral to the Court. This results in a paradox: the judicial route, usually perceived as formalistic, is here the less formal option.

In fact, the preliminary conciliation procedure in civil proceedings before traditional Court has been abolished by the new Code of Civil Procedure, proving that the chance of settling disputes in this manner – with a commercial element, it is true –

loads/2022/10/ROF_septembrie-2022.pdf (accessed August 18, 2025).

¹⁷ Hodges, Benöhr, and Creutzfeldt-Banda, "Consumer-to-Business Dispute Resolution," 204. The literature notes that major schemes finance their activities by charging member traders an annual fee (or a fee imposed by law) and a separate fee per case. In some schemes, the first or second case attracts no case fee, encouraging traders to resolve matters before they become complaints and recognizing that traders should not be individually penalized for cases with little merit. *Ibid.*, 212.

¹⁸ Lavinia Elena Smarandache (Stuparu), "Mecanisme de soluționare extrajudiciară a conflictelor dintre instituțiile de credit și consumatori" [Extrajudicial Dispute-Settlement Mechanisms between Credit Institutions and Consumers], *Revista Română de Drept al Afacerilor*, no. 7 (2016): 81.

was, in fact, illusory: the claimant formally followed the procedure, and the result was a delay in the proceedings, not their resolution.

Therefore, making a valid referral to the ADRCB conditional on attempting to settle the case amicably is unnecessary and should be repealed. Until then, however, the provision should be applied with maximum flexibility so as not to further discourage consumers from using this mechanism.

3.2. "The dispute is brought in bad faith"

The case of refusal consisting in lodging the complaint in bad faith is regulated by Art. 5 para. (4) lit b) of the SAL Directive, Art. 5 para. (4) lit. b) of GO No. 38/2015 and Art. 18 para. (3) lit. e) of the ADRCB Regulation.

It can be inferred that an *ab initio* classification of the dispute as brought in bad faith or as offensive was provided for in order to limit the burden on the SAL with vexatious, insulting, or even clearly abusive proceedings that would affect the climate of dialogue and could even turn into harassment of the professional or even of the SAL Entity. Commendably, the ADRCB Regulation does not include the alternative hypothesis of the "offensive" nature of the dispute in the SAL Directive and in GO 38/2015.

Despite its innocent purpose, the provision is flawed in the following ways:

a) Ambiguity, stemming from the Directive: what are, in fact, the boundaries of good faith, itself a vague concept?

b) Superficiality, since it provides that it is possible for a non-judicial entity to determine, at the early stage of the dispute, solely on the basis of the consumer's claims, that there is bad faith in starting the dispute; in the same situation, if the case is brought before the Court, the later would be obliged to examine the merits of the case before reaching such a serious conclusion as that contained in the legal provision.

c) It indirectly implies the determination of the lack of chances of success by a non-judicial entity, which does not have sufficient guarantees to decide thus, based on minimal elements, without giving the consumer the opportunity to support and prove their claims.

d) Granting ADRCB an extremely wide margin of discretion, in the absence of any legal criteria, in violation of any trace of predictability. Essentially, in the context of overly vague wording, unaccompanied by clear and relevant criteria, the ADRCB may even subjectively and arbitrarily dismiss a banking dispute simply because it wishes to do so, indicating that it is being promoted in bad faith, with the effect of limiting access to the SAL.

e) It may discourage consumers from resorting to ADR for fear that an inappropriate tone could lead to the refusal to resolve the claim.

3.3. "Disputes brought by the consumer after the expiry of a period of one year from the date of the event giving rise to the dispute or from the date on which the consumer submitted the complaint to the contracting trader"

The regulation of the case of refusal is found in Art. 5 para. (4) lit. e) of the ADR Directive, Art. 5 para. (4) lit. d) of GO No. 38/2015, and Art. 18 para. (3) lit. d) of the

ADRCB Regulation.

Countries with a tradition in settling such cases through ADR — such as *the Netherlands* — have had to adjust the procedural rules for resolving consumer disputes by ADR entities (including Kifid SAL Entity, which handles disputes concerning financial services) to comply with the requirement of a pre-set time limit, which cannot be set at less than one year from the date on which the consumer submitted the complaint to the trader¹⁹.

Returning to our regulation, if the duration of the time limit is common to all three regulations, *i.e.* one year, the moment from which it starts to run, the ADRCB Regulation (i) includes, in addition to the Directive, the moment when the act was committed (the Directive refers exclusively to the moment when the complaint was filed) and (ii) in contrast to GO 38/2015, the date of cessation of the continuing acts.

The rationale behind the rule is to ensure prompt resolution, prevent the perpetuation of uncertainty, and allow a short time to reconstruct the facts and documents.

Firstly, the effect can only be discouraging, especially since the typical consumer in this area is vulnerable and uninformed. In the area of credit, the act is a long-term one. The entire consumer protection legislation is designed to support the consumer, including by eliminating procedural or limitation periods. There is no strict time limit for bringing actions to establish the invalidity of unfair terms before the Courts, yet there is one for complaints to be brought before ADRCB. Therefore, there is no truly relevant argument for applying time limits where they are not appropriate.

Secondly, setting a strict and short time limit is likely to affect the principle of effectiveness, unjustifiably restricting the right to lodge a complaint in time, contrary to the purpose of Directive 2013/11/EU, which aims to provide easy access to remedies.

Thirdly, the short time limit of only one year is not justified given the lack of any real urgency to reconstruct the facts and documents (the documents will still exist in three years' time), the type of procedure, the specific subject matter, and the proverbial lack of preparation of consumers.

Legal doctrine states that the competent authorities should monitor ADR entities in the field of consumer protection to ensure that no new barriers to consumer access to remedies are created when these entities are allowed to reject complaints²⁰.

Given the discretionary nature of the rule in the ADR Directive, as well as the numerous arguments listed above, I believe that this case of screening cases subject to ADR should be repealed.

¹⁹ Netherlands, act transposing Directive 2013/11/EU, art. 3(2); Eline Verhage, "The Implementation of the Consumer ADR Directive in the Netherlands," in *The New Regulatory Framework for Consumer Dispute Resolution*, ed. Pablo Cortés (Oxford: Oxford University Press, 2016), 243, <https://doi.org/10.1093/acprof:oso/9780198766353.003.0012>.

²⁰ Pablo Cortés, "The New Landscape of Consumer Redress: The European Directive on Consumer Alternative Dispute Resolution and the Regulation on Online Dispute Resolution," in *The New Regulatory Framework for Consumer Dispute Resolution*, ed. Pablo Cortés (Oxford: Oxford University Press, 2016), 23, <https://doi.org/10.1093/acprof:oso/9780198766353.003.0002>.

4. Legitimate doubts about neutrality: when the funder sits at the same table with the consumer

EU and domestic regulatory context. Firstly, it should be noted that the ADR Directive establishes²¹ neutrality as a fundamental pillar of ADR and an inherent, mandatory procedural guarantee of the ADR procedure.

Directive 2013/11/EU of the European Parliament ('ADR Directive') does not establish a specific standard of financing, so that it may be public or private²²; moreover, it explicitly admits that it may come from the private business sector²³.

Our system has opted for private funding²⁴.

The provisions of Article 6(1) of the SAL Government Ordinance classify the individuals responsible within the SAL as 'independent' and 'impartial'. On this basis, conciliators²⁵ have been classified in doctrine as 'impartial intermediaries²⁶', and on the basis of EU status as 'neutral third parties²⁷'.

The provisions of Article 21(3)(a) of the SAL Government Ordinance state, with almost brutal candor, that '*the financing of the SAL Center shall be provided by traders acting within the scope of their commercial activities in the banking sector, in accordance with the provisions of paragraph (1)*²⁸'. But can a procedure financed by the powerful litigant party be completely neutral?

Even if the following letters of the paragraph make room – more out of courtesy – for alternative sources of funding (own income, donations, and sponsorships), their placement 'at the bottom of the list' only emphasizes the impression that they are truly marginal in terms of the actual percentage of funding, not to mention more hypothetical than real. This reality casts a shadow of doubt on the entire ADRCB system from the outset.

The importance of funding. The issue of financing SAL schemes is closely

²¹ Directive 2013/11/EU, art. 6(1).

²² European Commission, *Report to the European Parliament, the Council and the European Economic and Social Committee on the Application of Directive 2013/11/EU ... and Regulation (EU) No. 524/2013*, COM(2019) 425 final (September 25, 2019), sec. 2, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52019DC0425> (accessed October 26, 2025).

²³ Directive 2013/11/EU, recital 46: "This Directive should not affect the possibility for businesses or professional organisations or business associations to finance ADR entities."

²⁴ Stănescu, "Consumer ADR in Romania," 116.

²⁵ ABDRC Regulation, art. 15(7)(c), provides for removal of a conciliator from the List of Conciliators when the conciliator is disqualified for legal incapacity. This ground is outdated because it does not reflect the paradigm shift introduced by Law no. 140/2022: interdiction was replaced by protective measures (decision-making support, judicial counseling, and special guardianship). The provision should therefore be reformulated so that removal occurs whenever a conciliator is subject to a protective measure or another legal situation that impairs the capacity to perform the role or creates an incompatibility.

²⁶ Dragoș Mihail Mănescu, *Drept bancar: Curs universitar* [Banking Law: University Course] (Bucharest: C.H. Beck, 2025), 303.

²⁷ Cortés, "New Landscape of Consumer Redress," 24.

²⁸ In addition to these sources, ABDRC Regulation, art. 20(1), provides for funding "(b) from its own income generated from consultations provided, upon request, to interested natural or legal persons other than the parties to the dispute; (c) from amounts charged for the professional training of interested persons; (d) from amounts charged for other services provided upon request." In the Republic of Moldova, an ADR entity may be financed from public, private, or mixed funds; see Law no. 105/2003 on Consumer Protection, art. 33(18), as amended by Law no. 342 of November 24, 2023, *Official Gazette of the Republic of Moldova*, nos. 474–76 (December 13, 2023).

linked to the quality of SAL: in the absence of sufficient resources, (i) these schemes do not achieve their objectives and cannot provide high-quality services within 90 days, (ii) staff are less likely to have the appropriate and up-to-date expertise to resolve complaints²⁹; so without adequate financial resources, ADRCB would not have the operational capacity or highly professional conciliators; therefore, funding is the backbone of ADR.

At the same time, funding arrangements can significantly change consumers' perception of service quality³⁰. Indeed, the origin of resources is important from the perspective of perceived neutrality. According to doctrine, the perception of the neutrality of authorities is a criterion that enhances the sense of procedural justice³¹.

That is precisely why the budgetary architecture is in itself a guarantee of neutrality. This is also why it would be desirable for funding to be public or at least separate from industry³².

The principle of separating the administrative function from the adjudicative function. The obligation of abstention of the Management Board. Although the Board has responsibilities for organizing and handling the general functioning of ADR procedures, it has no right to influence in any way the decision to be rendered in a particular dispute³³. Thus, the Board's competence is purely administrative and logistical (e.g. managing lists of conciliators, adopting internal regulations, ensuring the framework for conducting procedures). On the other hand, the power to settle each dispute lies exclusively with the appointed conciliator, who must exercise his role independently and impartially, without pressure or suggestions from the management structure. This clear separation between the administrative function (the Board) and the adjudicative function (the conciliator) is a fundamental guarantee for consumers and traders, designed to prevent any suspicion of bias or lack of objectivity.

Depersonalization of contributions from merchants. One argument in favor of the current financing scheme is that conciliators are paid by ADRCB, not directly by merchants; indeed, merchants' payments to ADRCB are depersonalized, as conciliators are paid from ADRCB funds.

However, in the consumer's perception, this indirect transfer of funds from traders to the conciliator via the ADRCB is only likely to create the illusion of neutrality: in reality, for them, the funding comes from traders, even if indirectly.

The lack of connection between the remuneration of conciliators and the outcome of the ADR procedure. It is also true that GO 38/2015³⁴ – transposing the

²⁹ Alexandre Biard, "Impact of Directive 2013/11/EU on Consumer ADR Quality: Evidence from France and the UK," *Journal of Consumer Policy* 42 (2019): 135, <https://doi.org/10.1007/s10603-018-9394-z>.

³⁰ Biard, "Impact of Directive 2013/11/EU," 135.

³¹ Tom R. Tyler, *Why People Obey the Law* (New Haven, CT: Yale University Press, 1990), quoted in Marc Hertogh, Marc Wever, and Bert Marseille, "It's All About the Money. Or Is It? Consumers' Experiences with the Financial Services Complaints Institute (Kifid) in the Netherlands," *Zeitschrift für Rechtssoziologie* 43, no. 1 (2023): 126, <https://doi.org/10.1515/zfrs-2023-2005>.

³² To prevent doubts about neutrality, Directive 2013/11/EU, art. 6(3)(d), requires separate budgets for ADR entities employed or funded by traders. Portugal follows the same logic by excluding trader funding; see Cebola, "Implementation of the Consumer ADR Directive in Portugal," 261.

³³ ABDRC Regulation, art. 16(2).

³⁴ Government Ordinance no. 38/2015, art. 6(1)(d); Directive 2013/11/EU, art. 6(1)(d).

ADR Directive³⁵ – and the ADRCB Regulation³⁶ stipulate that the remuneration of individuals responsible within the ADR is not linked to the outcome of the ADR procedure.

Obviously, this rule – which is rational, by the way – could not be used as an argument against the lack of independence grafted onto the main source of funding.

And yet, what is wrong with funding by traders? We will analyze the following perspectives:

a) The Italian perspective. The ADRCB procedure has some points in common with joint conciliation under *Italian* law.

SAL schemes under the Italian system are funded directly by the trader and operate on a joint basis, with one representative from each side – but ‘jointness’ does not equate to independence³⁷. For certification as an ADR entity, the law requires a committee that is ‘independent’ from the trader, but this separation is rather formal: the committees do not have separate legal personality and remain financed by the same trader³⁸. However, party-appointed conciliators do not meet the requirements of Article 6(3)(d) of the ADR Directive, which requires that persons settling disputes have a separate budget and are not hierarchically or functionally subordinate to the trader³⁹. It follows that, in their current form, joint conciliations do not meet these guarantees, as the conciliators are in fact ‘working’ for the trader⁴⁰.

b) The Portuguese perspective. In Portugal, Consumer Arbitration Centers are co-financed by their member organizations and the Ministry of Justice⁴¹.

Funding by traders was rejected in order to protect the transparency and independence of the Centres and to avoid consumer doubts about their neutrality⁴². The same reasoning was adopted by the ADR Directive when it imposed separate budgets for ADR entities engaged or funded by traders⁴³. This is why it was decided to regulate reduced procedural fees⁴⁴.

c) The Spanish perspective. In Spain, ADR entities are publicly funded, the positive effect being to ensure the degree of independence required by Article 6 of the ADR Directive⁴⁵.

Furthermore, the public leadership role assumed by state officials in the dispute resolution system can contribute positively to compliance with the principle of

³⁵ Directive 2013/11/EU, art. 6(1)(d).

³⁶ ADRCB Regulation, art. 12(2).

³⁷ Carlo Pilia, Pablo Cortés, and Paolo Vargiu, “The Implementation of the Consumer ADR Directive in Italy,” in *The New Regulatory Framework for Consumer Dispute Resolution*, ed. Pablo Cortés (Oxford: Oxford University Press, 2016), 217, <https://doi.org/10.1093/acprof:oso/9780198766353.003.0011>.

³⁸ Pilia, Cortés, and Vargiu, “Implementation ... in Italy,” 217.

³⁹ Pilia, Cortés, and Vargiu, “Implementation ... in Italy,” 217–18.

⁴⁰ Pilia, Cortés, and Vargiu, “Implementation ... in Italy,” 218. The Dutch financial-services dispute-resolution system is funded entirely by the financial-services sector; see Verhage, “Implementation ... in the Netherlands,” 232. This does not appear to have raised concerns in the Dutch literature.

⁴¹ Cebola, “Implementation of the Consumer ADR Directive in Portugal,” 261.

⁴² Cebola, “Implementation of the Consumer ADR Directive in Portugal,” 261.

⁴³ Cebola, “Implementation of the Consumer ADR Directive in Portugal,” 261.

⁴⁴ Cebola, “Implementation of the Consumer ADR Directive in Portugal,” 261.

⁴⁵ Fernando Esteban de la Rosa, “Challenges for the Implementation of the Consumer ADR Directive in Spain,” in *The New Regulatory Framework for Consumer Dispute Resolution*, ed. Pablo Cortés (Oxford: Oxford University Press, 2016), 278, <https://doi.org/10.1093/acprof:oso/9780198766353.003.0014>. This was, at least, the situation before implementation of the Directive.

impartiality⁴⁶.

d) Perspective on ADR:

- **Dependence on traders: applying, *mutatis mutandis*, the criticism of the Italian system to the ADRCB.** *Mutatis mutandis*, the criticism levelled at the Italian system can also be applied, in part, to the ADR system: although formally the Romanian entity complies with the requirements of institutional independence and voluntary procedure laid down in Directive 2013/11/EU, financial dependence on the industry affects its neutrality, even if only in appearance. Although in Italy joint conciliation is an internal system of the trader (*in-house* SAL) – and therefore more problematic – and ADRCB is an external sectoral entity authorized by ANPC (third party SAL), the convergent functional effect remains: dependence on the trader (through funding/consent) erodes the neutrality of the mechanism. In short, different architecture, same underlying vulnerability. That is precisely why a lucid legislator would have followed the Portuguese example: excluding industry funding as a premise of institutional architecture, in order to prevent any suspicion about the neutrality and independence of the mechanism.

- **The (in)dependence of ADRCB.** The wording, with its disarming clarity, only serves to enshrine — unequivocally and without embellishment — the financial dependence of the ADRCB on the very economic actors it is supposed to arbitrate independently and impartially. In this regard⁴⁷, it has been noted — undoubtedly judiciously — that the ADRCB's independence from market surveillance and control structures, as well as the prohibition on following the instructions of any party involved in the alternative resolution of disputes between traders and consumers, smacks more of a statement of principle than of tangible reality. This official 'neutrality' takes on an ironic tone — 'it has a certain degree of hypocrisy' in the words of the quoted author — when viewed in the light of two realities that are difficult to ignore: (i) first, traders finance the ADRCB and (ii) second, the governing bodies include representatives of supervisory and control authorities — institutions such as the National Bank of Romania — which, although present here as 'guarantors of balance', remain hierarchically subordinate and employed on the basis of an employment contract alongside the entities that, in theory, they should view impartially⁴⁸.

The financing of the ADR Center by the very commercial banks whose practices are the subject of ADR proceedings, *i.e.* by the professional category of the consumer's adversary, turns the entire arsenal of principles proclaimed by the SAL Government Ordinance on impartiality, independence, fairness, conflicts of interest, and incompatibilities into a rhetorical backdrop designed to mask a procedure that is as elegantly formulated as it is unappealing to consumers⁴⁹. The result? An independence proclaimed emphatically, but with roots deeply embedded in the interests it is supposed

⁴⁶ Esteban de la Rosa, "Challenges for the Implementation," 278.

⁴⁷ Gheorghe Piperea, *Protecția consumatorilor în contractele comerciale* [Consumer Protection in Commercial Contracts] (Bucharest: C.H. Beck, 2018), 428.

⁴⁸ Piperea, *Protecția consumatorilor*, 428. The literature shows that business sectors may shift from opposition to active support, including funding, for ADR systems when they anticipate significant benefits, such as maintaining a strong reputation in competitive markets or averting the threat of collective litigation. Christopher Hodges, "Current Discussions on Consumer Redress: Collective Redress and ADR," *ERA Forum* 13 (2012): 31, <https://doi.org/10.1007/s12027-011-0245-5>.

⁴⁹ Piperea, *Protecția consumatorilor*, 428.

to regulate from a distance. Such a configuration not only leaves room for suspicion, but also creates a subtle imbalance between appearance and substance, between the letter of the law and functional reality. A procedure that, instead of inspiring consumer confidence, achieves the opposite: through its very financial architecture, it becomes very unattractive to those on whose behalf it claims to operate.

This results in an image that is uncomfortable, to say the least: a body designed to settle disputes between consumers and traders is ‘financially supported’ by the very party with the dominant economic power and a direct interest in the outcome of the proceedings, contrary to the fundamentals and particularities of consumer law: the balance is even more unbalanced.

Such a funding structure not only raises legitimate suspicions about institutional independence, but also contravenes the requirements of apparent neutrality, requirements that are recognised in European doctrine and in the case law of the CJEU on alternative dispute resolution mechanisms.

Independence is not only a matter of reality, but also of perception; and the perception of an institution financed by those it ‘judges’ can only be biased — with the inevitable effect of eroding consumer confidence and discrediting the mechanism as a whole.

The independence of the persons responsible within the ADRCB, claimed as a general theoretical guarantee by Article 6(1) of the OG SAL, is thus emptied of content in practice by financial dependence on traders, generating a strong contradiction between theory and practice.

In conclusion, even if financing by banks does not *per se* contravene Directive 2013/11/EU, it creates a significant perception risk: the management of the dispute by an institution perceived as close to the trader is more likely to induce a feeling of mistrust that will redirect the consumer to the Courts rather than motivate them to use ADR. This is all the more so since a solution unfavorable to the consumer is likely to cast a shadow over the consumer's perception of the entire procedure⁵⁰.

5. Low level of quality requirements for the appointment of arbitrators in the imposed solution system

It has already been shown that at EU level, certified ADR providers with unequal levels of quality can coexist, due to differences in behavior and rigor between the competent authorities during the examination of certification applications and subsequent quality checks⁵¹.

The ADRCB Regulation imposes on arbitrators⁵² legal or economic profile requirements, a minimum of 10 years of experience and financial-banking expertise⁵³.

⁵⁰ Naomi Creutzfeldt, “How Important Is Procedural Justice for Consumer Dispute Resolution? A Case Study of an Ombudsman Model for European Consumers,” *Journal of Consumer Policy* 37, no. 4 (2014): 543, <https://doi.org/10.1007/s10603-014-9269-x>.

⁵¹ Biard, “Impact of Directive 2013/11/EU,” 113.

⁵² When the parties choose an ADR procedure ending in an imposed solution, the person selected from the List of Conciliators acquires the status of arbitrator. ABDRC Regulation, art. 14(4).

⁵³ ABDRC Regulation, art. 13(b), (d). The literature often refers only to the need for dispute-resolution personnel to be specialists in finance and banking, without examining the indispensable legal dimension. Smarandache (Stuparu), “Mecanisme de soluționare extrajudiciară,” 94.

These qualities correspond to the competence requirements of the SAL Directive for proposed settlement procedures. From this perspective, foreign doctrine indicates that, although they are not required to be licensed legal practitioners, neutral third parties must nevertheless have solid knowledge of ADR or the judicial resolution of consumer disputes and a general understanding of the law⁵⁴.

Despite compliance with the ADR Directive, however, for imposed solution procedures, where the effects are binding and legal assessments are central, a higher standardization of qualifications would be justified – for example, mandatory legal qualification (and not just as an alternative to economic training) and specific training in consumer law (and not just general economic training); this could increase the legitimacy, predictability, and possibly even the attractiveness of ADR.

Viewed comparatively, the *German* system offers an important and interesting lesson on the evolution and maturation of the transposition project regarding quality standards in ADR: from an initial, almost innocent, generic vision, the legislator was pushed – through the engine of debate – towards a much more demanding formula, anchored in specific and verifiable qualifications. In concrete terms, the first version of the draft was rather vague and only mentioned that the conciliator must have the necessary general legal knowledge and the ability to settle disputes within his or her sphere of competence⁵⁵. This approach was naturally criticized, in particular for its lack of any reference to consumer law and because, in Germany, most ADR entities only accept as conciliators persons who have passed the second state examination (equivalent to the qualification for the position of judge⁵⁶, the final stage of legal training). Consequently, the Act transposing the Directive now includes an explicit reference to consumer law and stipulates that the neutral party must either be qualified to serve as a judge or be a certified mediator⁵⁷, in fact a higher standard that is consistent and offers greater credibility to consumers.

The *Dutch* Kifid model (SAL in the field of financial banking services) takes this a step further by requiring that both the Financial Ombudsman and the chair of the Financial Complaints Commission be judges⁵⁸.

The *French* system goes further than the Directive, as it is not satisfied with the ‘general understanding of the law’ provided for in Article 6(1)(a) of the SAL Directive, requiring not only a good knowledge of the law, but also a specific knowledge where it is truly relevant, *i.e.* mediation in the field of consumption and consumption law⁵⁹.

The rationale for the different approach in the Dutch ADR landscape, compared to the training requirements for persons responsible for dispute resolution, *may lie in the*

⁵⁴ Cortés, “New Landscape of Consumer Redress,” 24.

⁵⁵ Rosa Miquel, “The Implementation of the Consumer ADR Directive in Germany,” in *The New Regulatory Framework for Consumer Dispute Resolution*, ed. Pablo Cortés (Oxford: Oxford University Press, 2016), 180, <https://doi.org/10.1093/acprof:oso/9780198766353.003.0009>.

⁵⁶ Burkhard Hess, “Prozessuale Mindestgarantien in der Verbraucherschlichtung,” *JuristenZeitung* 70, no. 11 (2015): 553, <https://doi.org/10.1628/002268815X14285868604736>.

⁵⁷ Miquel, “Implementation ... in Germany,” 180.

⁵⁸ *Reglement Ombudsman en Geschillencommissie financiële dienstverlening 2014*, arts. 2(1), 5(2); Verhage, “Implementation ... in the Netherlands,” 243. The architecture is difficult to replicate in other member states because the Dutch model’s success is rooted in a legal culture known for compromise and cooperation between consumer and trader associations. *Ibid.*, 246.

⁵⁹ Guinchard, “Implementation ... in France,” 161 and n. 97, referring to art. L. 153-1 of Ordinance no. 2015-1033 of August 20, 2015.

complexity of the cases handled by the ADR entity⁶⁰.

This standard is not imposed by the Directive, but it highlights how the level can be raised to strengthen confidence and the quality of solutions, thus providing a benchmark for good practice in the field. For ADRCB, such a threshold would increase credibility and attractiveness in the eyes of consumers, who would perceive more as a ‘Court’ that delivers a faster solution.

6. The illusion of ‘choosing’ the sole arbitrator in SAL within the imposed solution system

According to the ADR Rules⁶¹, the sole arbitrator who constitutes the Arbitral Tribunal, as well as the alternate arbitrator, are chosen by the consumer (from the List of Conciliators).

So far, the normative architecture gives the impression of a welcome procedural advantage for the consumer: he is the one who takes the initiative, he chooses, and the trader just passively follows the proposed course. At first glance, the image of a consumer endowed with the prerogative of decision-making emerges. The choice of arbitrator seems to be a compensation for his structurally disadvantaged position in relation to the bank: here, at last, is a small triumph for the “weaker party”!

However, a careful reading of the text and the consequences of its application through the profound implications of the merchant's acceptance is necessary. The ‘choice’ is not, in fact, authentic; it is purely conditional. The arbitrator appointed by the consumer must be accepted by the merchant. Without this acceptance, the Arbitration Tribunal cannot be constituted. We thus have a right of ‘choice’ that evaporates at the first refusal of the bank, transformed into a mere proposal without legal effect. In reality, in clever language, the Regulation leaves the consumer with only the illusion of power: the consumer does not choose, but only *proposes*, and the trader *decides* by ‘veto’. In practice, the right of choice is emptied of substance by making it conditional on the consent of the other party.

The essence of the paradox lies precisely in the repetition of refusal: the trader can successively reject the consumer's proposals – the ADRCB Regulation gives them this possibility – until, inevitably, an arbitrator more suited to their preferences is found. In this scenario, the consumer's initiative becomes an illusion of autonomy, and the real power lies in the hands of the professional.

Moreover, practical experience amplifies the imbalance. The trader, being a recurring participant in multiple ADRCB procedures, knows the profile of the conciliators, their inclinations, how they view banking conflicts, and their practice. The consumer, on the contrary, participates — in almost all cases — for the first and probably last time, which is why they do not have access to the same experience. Their knowledge of the Arbitration Board is limited, and in most cases non-existent. Therefore, the apparent symmetry masks a consolidated asymmetry: the advantage of knowledge is, in fact, on the side of the bank.

Therefore, what appears in the normative text as a concession made to the

⁶⁰ *Reglement Ombudsman en Geschillencommissie financiële dienstverlening 2014*, arts. 2(1), 5(2); Verhage, “Implementation ... in the Netherlands,” 243.

⁶¹ ADRCB Regulation, art. 15(4).

consumer turns out, in essence, to be a subtle mechanism for preserving the dominant position of the trader. The ‘choice’ of a sole arbitrator is only a promise of symbolic power, which evaporates in contact with the reality of the veto. The misleading use of the word ‘choice’ instead of ‘proposal’ in the Regulation seems to be understood in this light. The real doctrinal question remains: are we dealing with a right or just a ‘form without substance’, a simulacrum intended to suggest consumer protection where, in fact, the rules of the game continue to be dictated by the powerful party?

7. The ADRCB's inability to find an unfair clause in the contract: what is the value of dialogue when unfair clause cannot be found?

Undoubtedly, ADRCB does not have the competence to determine the unfairness of a clause in legal terms, either upon request or ‘ex officio’. This is because the role of this alternative dispute resolution body is to mediate or propose amicable solutions, including the renegotiation of contracts, which is why the law does not recognize such power for this entity. All ADRCB can do is encourage the elimination or modification of potentially unfair terms – without qualifying them as such.

In fact, at its inception, ADR should not even be considered as an instrument that can replace traditional litigation, but only as an instrument that can help settle disputes in a rapid, cost-effective, and transparent manner⁶²; it is not an alternative to justice⁶³, at least not in its true and complete sense.

Therefore, the analysis of the unfairness of a clause and the remedy of declaring it null and void is the exclusive prerogative of the Court of law.

From the consumer's perspective, the situation is clearly unfavorable: the lack of official recognition of the unfairness of the clause denies them satisfaction of justice and the right to formal protection. At the same time, the bank retains a privileged position, boasting that it did not include unfair terms in the contract and that, in fact, it simply made a concession to the consumer to settle the dispute by returning some money, thus turning a potentially unfair situation into a tool to boost its reputation.

Perhaps some consumers will console themselves with a financial gain, viewing it as temporary relief. But for most, the real burden is the lack of moral satisfaction from the explicit recognition that a certain clause was abusively slipped into the contract: a moral wound that cannot be healed by simply returning some money. Instead of genuine redress, they receive only an accounting compromise – which may be modest in relation to the actual damage caused – a calculated gesture that does not restore their damaged dignity and hides the very trigger of the dispute under the rug. Thus, their frustration is not diminished, but deepened, as they find themselves reduced to the status of beneficiaries of a concession, without justice being done in the deepest and most human sense of the term.

⁶² Erica Bosio, Salima Daadouché, Christian De La Medina Soto, and Maksym Iavorskyi, “Enforcing Contracts: Measuring Good Practices in the Judiciary,” in *Doing Business 2016: Measuring Regulatory Quality and Efficiency* (Washington, DC: World Bank, 2016), 96, <https://openknowledge.worldbank.org/handle/10986/22771>.

⁶³ Ștefan Răzvan Tătaru, “Soluționarea prin mijloace alternative a litigiilor apărute în comerțul internațional cu produse farmaceutice” [Alternative Dispute Resolution in International Trade with Pharmaceutical Products], *Analele Științifice ale Universității „Alexandru Ioan Cuza” din Iași: Științe Juridice* 64, no. 1 (2018): 205.

8. The impossibility of using the mechanism of action to cease the use of unfair terms in the future and to amend contracts

The mechanism provided for in Articles 12 and 13 of the Unfair Terms Law is not, strictly speaking, negotiable. We are not dealing with a dispute that can be settled by agreement between the parties on its subject matter or effects, as is the case with private common law relationships. On the contrary, we are dealing with a form of litigation based on normative public policy, where the provisions are mandatory and the interests involved go beyond the individual sphere, being deeply linked to the function of market balancing and systemic consumer protection.

Moreover, even from a forward-looking perspective, it would be difficult to imagine an alternative mechanism for resolving these disputes that could legitimately and effectively replace the analysis of the authority or the control of the Court of law. Arbitration or mediation — typical forms of alternative dispute resolution — essentially presuppose the parties' freedom of disposition over the legal relationship and a relative equivalence of their positions. However, in a dispute concerning the determination of unfair terms of a general nature, there is no legal symmetry, and freedom of disposition is nullified by the mandatory nature of the regulation.

Therefore, the liability of the professional that may be incurred under the provisions of Articles 12 and 13 of the Unfair Terms Law is not compatible with the logic of alternative dispute resolution. The dispute is, par excellence, a contentious one, and its stake is not only the repair of individual damage, but the restoration of legality in an entire market segment.

9. The lack of attractiveness of the SAL Center

The extent to which the ADRCB is attractive to consumers must be analyzed on several **levels** and from several perspectives.

9.1. The psychological factor: consumers' structural distrust of banks

In legal relations between banks and consumers, the psychological dimension proves to be not just a secondary element, but often the determining factor that shapes the perceptions, attitudes, and behaviors of those involved.

The premise is that consumers have low confidence in banks. Even before sitting down at the negotiating or litigation table, consumers bring with them a baggage of suspicions that have built up over time, fueled by their own experiences or those reported by others, but also by a collective imagination in which banking institutions appear as symbols of opaque and implacable financial power.

This mistrust erodes even further and more rapidly when a conflict arises. While under normal circumstances consumers may show a minimal degree of pragmatic acceptance of the rules of the banking game, when a dispute arises, the prevailing assumption is that the bank will defend its position by any means necessary, even through tactics that customers perceive as deceptive. In the consumer's imagination, the bank's profit is achieved through a sophisticated art of contractual subtleties, and his cooperation would only legitimize this asymmetry.

This creates a dynamic of mistrust that is not favourable to an amicable resolution: any openness on the part of the consumer is interpreted by the consumer as a potential weakness that can be exploited. Essentially, consumers start from the assumption that the bank wants to cheat them because that is how it ultimately makes its profits, which is why cooperation is a sign of vulnerability⁶⁴.

In this view, accepting the imposed terms or showing willingness to engage in dialogue is equivalent to symbolic capitulation to an institution perceived as structurally stronger and less concerned with fairness. Suspicion acts as a self-protection mechanism, even at the risk of blocking negotiation.

Thus, the contractual relationship is no longer perceived as a pact of mutual trust, but as an arena of confrontation, where the consumer's constant vigilance becomes the only means of defense against an adversary they consider dangerous rather than a partner. Instead of balance and legal rationality, emotion, fear, and a sense of precariousness prevail.

9.2. Practical reality: low consumer interest

On June 30, 2025, out of a total of 1,095 compliant requests registered with the Alternative Dispute Resolution Center in Banking (ADRCB), only 372 cases were finalized through an amicable agreement between the parties⁶⁵ — that is, an amicable settlement rate of approximately 34%, a modest percentage for a forum created precisely to relieve the Courts of law and offer a quick and flexible alternative to consumers.

Looking *back*, the available statistics unfortunately show a slow upward trend, with no significant increases in either the number of compliant claims or the number of claims resolved.

The proportion of cases settled amicably remains relatively low, which betrays a lack of real attractiveness of the ADR mechanism for most consumers. The overwhelming majority of consumers continue to choose the Court of law route, thus maintaining increased pressure on the judicial system and undermining the practical effectiveness of the alternative mechanism. From this perspective, ADR is far from being an effective tool for reducing disputes between banks and consumers⁶⁶.

The irony is that a tool created to ease the burden on the Courts of law still seems to function more as a marginal mechanism than a primary one — and the figures, more than the rhetoric, confirm this.

Therefore, the biggest challenges facing ADR procedures in Romania are a lack of attractiveness, trust, and awareness⁶⁷.

⁶⁴ The reasoning is adapted, *mutatis mutandis*, from construction disputes, where the perspective is that of authorized experts in disputes with contractors or subcontractors. David Richbell, *Mediation of Construction Disputes* (Oxford: Blackwell Publishing, 2008), 1, <https://doi.org/10.1002/9781444302530>.

⁶⁵ Alternative Banking Dispute Resolution Centre, *Report on Alternative Dispute Resolution Activity as of June 30, 2025*, July 29, 2025, https://csalb.ro/wp-content/uploads/2025/07/Raport-CSALB_S1-2025_RO_final.pdf (accessed August 13, 2025).

⁶⁶ For an optimistic view, arguing that the mechanism is effective and pointing to the growth in settled banking disputes — 290 in 2023, 145 in 2022, and 67 in 2021 — see Mănescu, *Drept bancar*, 304.

⁶⁷ Stănescu, “Consumer ADR in Romania,” 121.

10. Conclusions

The clear skies expected from ADRCB are delayed: heavy clouds of mistrust and structural dependence still hang over the mechanism.

Institutional trust is the connecting link: it transforms knowledge of ADR and the perception of fairness into satisfaction and the intention to use the procedure⁶⁸. Therefore, any doubt about the neutrality of the ADRCB acts as a deterrent, reducing the likelihood that consumers will turn to this entity.

Legal literature⁶⁹ reveals that the speed and transparency of alternative dispute resolution procedures, together with the requirements of fairness and independence, could constitute solid arguments for consumers to opt for this form of dispute resolution, to the detriment of traditional administrative or judicial mechanisms. However, doubts about the independence of ADR in the banking sector, may diminish the attractiveness of ADR and ultimately lead consumers to prefer the 'hard road' of traditional litigation. Although the ADR framework complies with the ADR Directive, the imposed solution would still require a higher standardization of qualifications in line with the modern European models analyzed: mandatory legal qualification (not an alternative to an economic profile) and dedicated training in consumer law. This upgrade would increase the legitimacy, predictability, and, probably, the attractiveness of ADR.

The free nature of ADRCB is, in fact, limited: the service is free (but this does not differ from the traditional Court of law procedure), but residual costs such as lawyers' fees remain the responsibility of the consumer. Unlike the traditional Courts of law, where there is legal aid and cost shifting (the possibility of recovering expenses from the professional in the event of a favorable outcome), in the ADRCB procedure each party bears its own expenses. The 'consolation' is that there is no risk of having to pay the bank's lawyer's fees as court costs, but the net benefit of "free" is diminished.

The other vulnerabilities of ADRCB cannot be ignored either: (i) screening based on restrictive grounds for refusal; (ii) the 'illusion of choice' of a sole arbitrator, as long as the procedure does not even starts without the trader's consent; and (iii) structural limitations – ADRCB cannot find clauses to be unfair, nor can it activate the mechanism of injunctive relief for the future or modify contracts. Overall, these constraints diminish the useful effect of the mechanism compared to the protections available in judicial proceedings.

The low enthusiasm of consumers and traders, low consumer involvement, and low consumer awareness are a general problem at EU level with regard to ADR⁷⁰. Starting from this point, if there is a genuine desire to design ADR as a truly effective and widely used tool for improving the resolution of disputes between banks and consumers, and not just as a means of relieving the burden on the Courts of law, attention should be focused on constructive ways of increasing the attractiveness of ADR.

Perhaps a Union initiative aimed at creating a uniform ADR code, balancing the

⁶⁸ Yu-Cheng Lin and Yiling Liu, "Beyond the Courtroom: Exploring Consumers' Trust and Usage of ADR in Financial Dispute Resolution," *Finance Research Letters* 85 (2025): 107872, 7, <https://doi.org/10.1016/j.frl.2025.107872>.

⁶⁹ Piperea, *Protecția consumatorilor*, 431.

⁷⁰ Marek Dąbrowski and Marcin Rokosz, "The Revision of Directive 2013/11/EU on ADR for Consumer Disputes: Strengthening or Only Reorganizing ADR Rights for Consumers?," *Review of European and Comparative Law* 60, no. 1 (2025): 171–72, <https://doi.org/10.31743/recl.17445>.

guarantees of a fair trial for the parties involved (*a.n. L.-Al. Viorel*, and here I am also referring to the independence requirements of the ADR entity), could represent a decisive moment in the evolution of the current alternative dispute resolution framework⁷¹.

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⁷¹ Ermelinda Hepaj, "A Significant Commitment: The Introduction of a Unified European Code on ADRs to Regulate Consumer Disputes: Several Challenges in the Enforcement Area," *Revista Ítalo-Española de Derecho Procesal*, no. 1 (2025): 183, <https://doi.org/10.37417/rivitsproc/2914>.

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