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# The Dutch approach towards consumer ADR/ODR as a comprehensive and inclusive gateway to justice

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## The Dutch approach towards consumer ADR/ODR

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### Outline

- Depicting the Dutch consumer ADR/ODR landscape
- A comprehensive gateway to justice
- An inclusive gateway to justice
- Conclusions

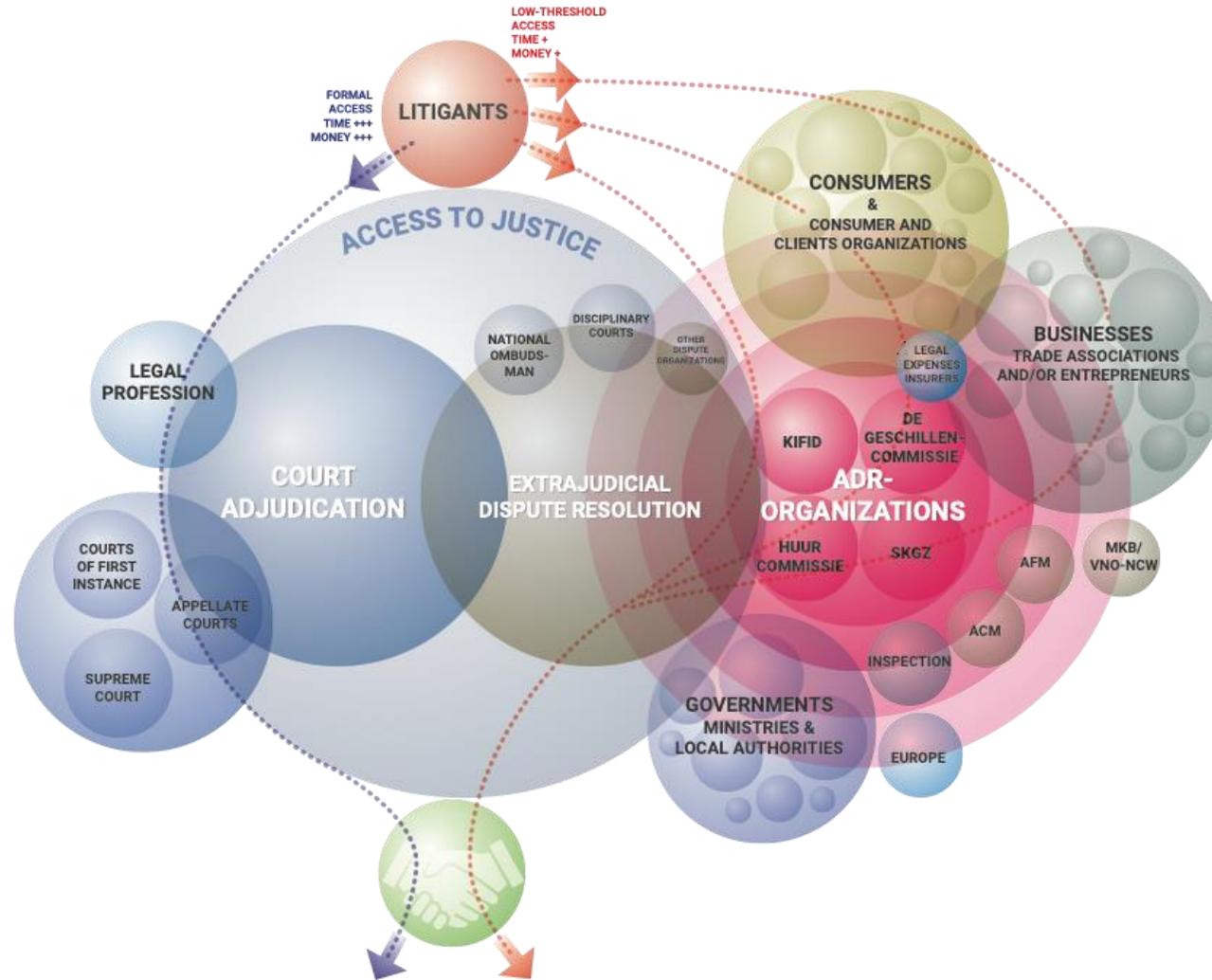
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# Depicting the Dutch consumer ADR/ODR landscape



# Depicting the Dutch consumer ADR/ODR landscape: Institutions



**Kifid**  
Dutch Institute for Financial Disputes

**SKGZ**  
Dutch Foundation for Healthcare Insurances Complaints and Disputes

**Huurcommissie**  
The Rent Tribunal

**De Geschillencommissie**  
Dutch Foundation for Consumer Complaints Boards

## Depicting the Dutch consumer ADR/ODR landscape: Processes

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### I. Triage

- Scope and eligibility check
- Fast track procedure

### II. Advice and/or referrals

- Information requests
- Referrals to and from other ADR entities, courts, or legal services providers

### III. Dispute settlement: conciliation, mediation

- Facilitating or proposing a solution
- Policy shift from dispute resolution to dispute settlement
- Approx. 40-50% of disputes resolved at this stage

### IV. Dispute resolution: binding advice, arbitration

- Imposing a solution
- Also non-binding advice is possible, but less frequent

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## The Dutch approach towards consumer ADR/ODR

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*A comprehensive gateway to justice*



## A comprehensive gateway to justice

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### Casting a wide net

- Self-regulatory, sectoral approach: 4 ADR entities covering 70 consumer markets (incl. healthcare)
- Full coverage: national “residual” embedded in De Geschillencommissie (Art. 5 par. 1 ADR Directive)

### Business participation in ADR

- Predominantly voluntary: De Geschillencommissie (incl. residual)
- Mandatory by law in specific sectors: Kifid, SKGZ, Huurcommissie

### The promise of ‘full coverage’?

- Access to an ADR **entity** ≠ access to an ADR **procedure**: Latter hinges on voluntary business participation
- Voluntary business participation in residual remains low (esp. SMEs, freelancers)
- ‘Access gap’ undermining EU consumer protection and access to justice aims

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## A comprehensive gateway to justice

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### Mending the 'access gap': carrots or sticks?

- Bottom up (carrots) v top down measures (sticks)
- Nudging measures: EU quality standards, information duties, strengthening cooperation between ADR entities, awareness campaigns
- Nudging and self-regulatory approach so far insufficient to incentivise many SMEs and freelancers to adhere to ADR (NL has approx. 1,5 million freelancers and SMEs)
- Possible need to reconsider voluntary business participation in EU and/or national legislation

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## *An inclusive gateway to justice*



## An inclusive gateway to justice: Digitisation

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### Introducing virtual/hybrid hearings

- Prior to the COVID-19 pandemic: hearings predominantly in person
- Little to no hearings in person during lockdowns: introducing virtual/hybrid hearings

### Scoreboard virtual/hybrid hearings

- **Best practices:** enhanced digital access (ODR came full circle), flexibility (fully remote or hybrid), time-saving (esp. SMEs), no travel expenses
- **Challenges:** upholding procedural safeguards during technical difficulties, digital illiteracy, equality of arms during hybrid hearings, not a one-size-fits-all solution

### Going forward: embedding virtual/hybrid hearings?

- Enriching/expanding palette of ADR techniques
- Variety in hearings could make ADR more attractive to SMEs, freelancers, tech-savvy customers, and generations Z and beyond
- Monitoring whether the need for virtual/hybrid hearings remains post pandemic

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## An inclusive gateway to justice: Vulnerable consumers

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### Reducing barriers to access our services: ‘Come as you are’

- We believe our services should be easily accessible for every consumer
- A common objective: reducing barriers to access to our services
- Towards ADR meeting people where they are, so they can *come as they are*

### Current projects improving access for vulnerable consumers

- Redesigning websites: working towards following web accessibility standards
- Using plain language for: rules of procedure, decisions, summaries of decisions, and correspondence
- Animated instructional videos of the various processes/key procedural steps
- Collaborations with social partners empowering vulnerable consumers

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## Conclusions

## Conclusions

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- **The Dutch consumer ADR/ODR landscape:** 4 ADR institutions together offer a wide variety of ADR services for a large number of consumer markets
- **A comprehensive gateway to justice:** full coverage institutionally, mending the 'access gap' to ADR processes due to less-than-full business participation
- **An inclusive gateway to justice:** reducing barriers to access to ADR for vulnerable consumers, so they can come as they are
- **Working together** towards greater access to ADR for all consumers

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**Thank you for you attention!**

**Questions?**

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