

The Online Dispute Resolution as Contribution to the Digital Single Market

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BACKGROUND

- Modernisation and simplification of consumer rules for online purchases is one of the aspects of completion of the DSM
- ODR is one of the first concrete results of the new DSM Strategy
- **Part of the 1st pillar – better access to online goods and services**
- One of third consumers experienced a problem when buying online in 2015
- 1/4 of them did not complain – long and unpredictable procedure, procedural costs vs. value
- May 2015 - only 38% of EU consumers felt confident about purchasing via Internet from retailer located in another MS
- May 2015 – only 7% of SMEs in the EU sell cross-border
- the development of the DSM is hindered by lack of consumer confidence, the prime cause of which is, *inter alia*, the current level of enforcement of consumer rights in cross - border transactions
- It is estimated that, if EU consumers can rely on well - functioning and transparent ADR procedure for their disputes, they could save around 22,5 billion EUR per year (0,19% of EU GDP)
- these are only direct savings

ODR AS INTEGRATIVE FACTOR OF THE DIGITAL SINGLE MARKET

- Fragmentation of the internal market impedes efforts to boost competitiveness and growth
- Uneven availability, quality and awareness of simple means of solving disputes constitutes a barrier within the internal market
- It undermines consumers' and traders' confidence in cross border transactions
- Availability of reliable and effective ODR could greatly help to achieve integration
- ODR contributes to the development of DSM due to the fact that it is easy, fast, affordable and effective procedural framework for solving **domestic and cross border consumer disputes** arising out of online environment
- **Long-term benefits:**
 - New ODR platform will strengthen trust in online purchases and thereby make an important contribution to the EU's DSM strategy
 - Protects relations in B2C contracts
 - Keeps good reputation of a trader
 - Consumer empowerment leads to development of e-commerce

- Online market = borderless market!
- Efficient ODR procedures should boost online purchases, in particular cross-border
- consumers will have more options, businesses will be provided with new opportunities and this will help drive economic growth
- And that is the main goal of the DSM Strategy



DEFINITION

- ODR = O(**A**)DR
- **Out – of – court** settlement of disputes in an electronic environment **using ICT**
- Possible discrepancies in terminology
- Is ODR service offered for settlement of disputes irrespective of the mechanism used and as long ICT is used? – wider notion, **ANY USE OF WEB-BASED PROGRAMME - UNCITRAL ODR WG**
- Or only if the procedure is **exclusively** conducted online and not just facilitated via ICT?
- EU factsheets (January 2016)- „ODR is an ADR procedure conducted **ENTIRELY ONLINE**”
- Should we take the same approach in B2B and B2C disputes in terms of type of procedure (online mediation vs. online arbitration)? – **UNCITRAL’s generic approach**
- **EU ADR and ODR legislation - consumer issues, not applied to disputes between traders**
- Which OADR procedure – e-arbitrations, e-mediation etc.?



EU ADR AND ODR SOURCES OF LAW

- It all started in 2011 – impact assessment accompanying proposals on RODR and DADR
- on 21st May 2013 ADR directive and ODR regulation were adopted
- ODR regulation complemented in 2015
- ADR directive – full coverage of all market sectors, **except for health and HE**
- ODR regulation – establishment of ODR platform – easy access to ADR entities which have to be registered at ODR platform

AND MORE...



- And the Directive 2008/52/EC of 21 May 2008 on certain aspects of mediation in civil and commercial matters stated that „this Directive should not in any way prevent the use of modern communication technologies in the mediation process” (Preamble, recital 9)
- RODR is without prejudice to MedDir

COMPLEMENTARY RELATION

- Both systems should allow consumers and traders to resolve their disputes without going to courts in an easy, fast and inexpensive way
- ODR and ADR are interlinked and complementary legislative instruments
- ODR system relies on ADR directive – ODR does not put any restriction on type of ADR procedure or ADR entity (arbitration, complaints boards, mediation...)
- ODR platform should build on existing ADR entities and respect MSs legal traditions
- ADR entities apply their own rules
- rules should ensure that resolution does not require physical presence of the parties /their representatives before the ADR entity (exemption: if such possibility is provided **and** parties agree)
- **NOTA BENE – ADR IS WIDER NOTION SINCE IT APPLIES NO MATTER WHETHER THE PRODUCT OR SERVICE WAS PURCHASED ONLINE OR OFFLINE**
- **ODR only for online purchase!**

ODR REGULATION

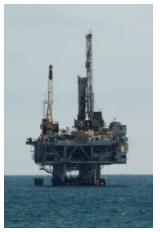
- Art I RODR: the purpose of this Regulation is to (...) contribute to the proper functioning of the internal market and, **in particular of its digital dimension** (...)”
- Covers ADRs initiated by consumers resident in the EU against traders established in the EU (and *vice versa*, if allowed by laws of a MS of consumer’s habitual residence) – in favour of consumer
- ODR is not intended to replace court procedures nor deprive both parties to a dispute from seeking court redress
- Intention is to speed up dispute resolution – 90 days for solving a dispute, starting from the receipt of the complete file

ONLINE SALES AND SERVICE CONTRACTS



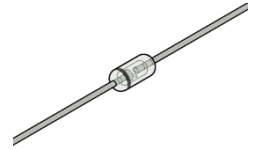
- Sales or service contracts where the trader or its intermediary has offered goods or services **through a website or by other electronic means** and the consumer has **ordered those goods or services on that website or by other electronic means**
- Web stores, e-mails, skype...?
- This is also valid for mobile phones and other mobile electronic devices
- Does not apply to offline, traditional contracts and B2B contracts

ODR PLATFORM

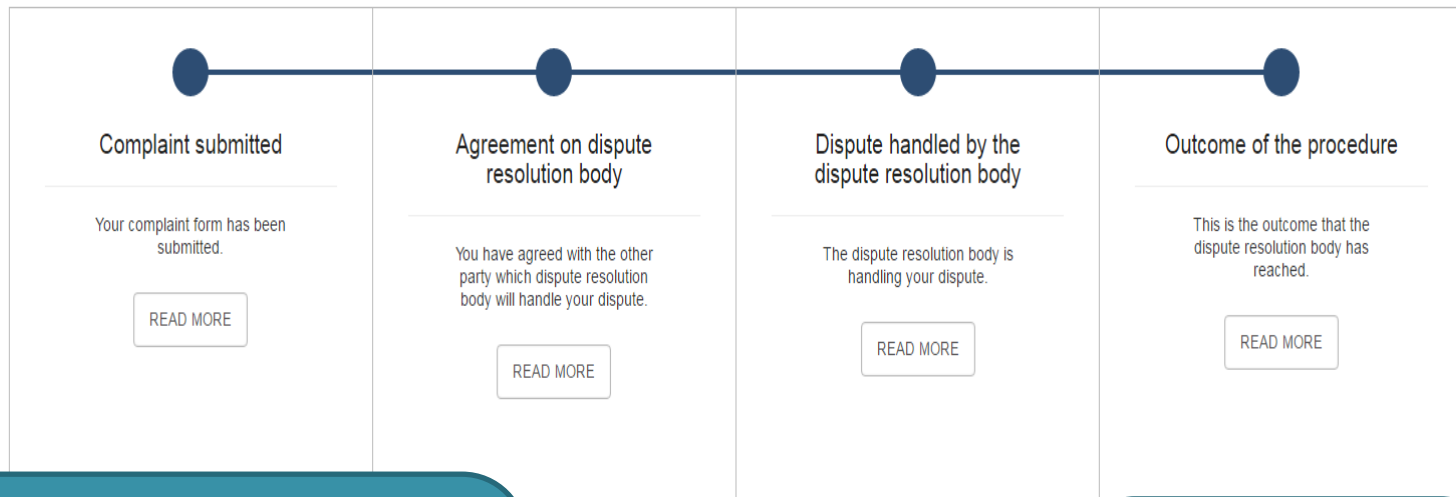


- <https://webgate.ec.europa.eu/odr/main/index.cfm?event=main.home.chooseLanguage>
- Developed and operated by the EU Commission
- Aim: Fast, cheap and efficient dispute settlement by using interactive webpages as single point of entry
- **NOTA BENE** – exclusively for disputes arising out of online purchase, it should allow for maximum geographical and sectorial coverage
- It allows consumers and traders to submit their contractual disputes and conduct the ADR procedure online and in any of the official languages of the EU
- It should reduce burden on the courts
- Free-of charge for MSs
- **Key obligation** – traders have to put a link on the ODR platform webpage - raising awareness of this services among consumers (Art 14 RODR)
- Two testing – June and November 2014

ODR CONTACT POINT



- The platform is in fact electronic case management tool
- The ODR transmits disputes only to ADR bodies who are included in the national lists of ADR bodies that comply with the binding quality requirements established by the ADR directive –complementarity
- National ODR contact point – ECC Net
- It should facilitate communication among parties and ADRBs
- Role – consumers can address their problems to it, ECCNet addresses their issues to some other national ADRB in charge of particular subject matter (e.g. financial service, travel service)

[View timeline](#)

The complainant party may attach documents in support of her/his complaint



Transmission to the respondent party who invites the complainant to agree on the ADR entity (10 calendar days)

If parties agree, the platform automatically transmits the complaint to the chosen ADR, which has to agree on handling the dispute



The complaint has been sent to the other party.

The ADR shall conclude the ADR procedure within 90 calendar days from the date on which the ADR received the complete complaint file (Art 8, DADR)



STATE OF PLAY - EU

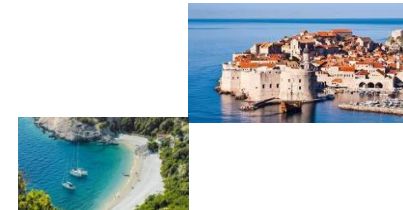
- January 2016:
 - 45 % of EU consumers think it is easy to resolve disputes via ADR
 - 70 % are satisfied with how their complaint was handled by an ADR
- **BUT**
- 40% of EU traders do not know about ADR
- 30% are aware and willing to use it
- 15% would like to use it but it is not available in their sector
- In 1/2016, very little registered ADR entities
- On 9/1/2016 ODR was launched – ADR bodies should signed up and familiarised themselves with the platform before it became opened for general public **on 15/2/2016**– all consumers and traders have access
- But, in practice, **only 1050 ADR** entities are registered in EU28
- FULL COVERAGE?

European Council conclusions, 17-18 March 2016

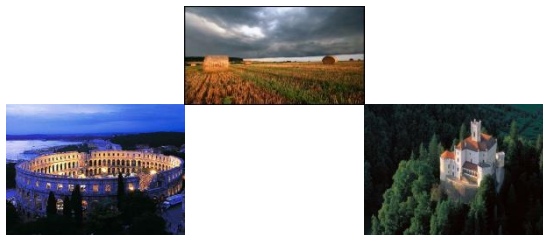
- Point 12:

At its June meeting, the European Council will (...) also adopt an Agenda for the implementation of all aspects of the Single Market, **including delivery of the Commission's Single Market, Digital Single Market and Capital Markets Union strategies, with a view to exploiting in full its untapped growth and productivity potential.**

STATE OF PLAY - CROATIA



- Croatian representatives took part in two initial testing of the ODR platform
- Croatia has not implemented ADR directive neither ODR platform – no ADR entities listed at the ODR platform
- Penalties?
- No national law – final draft of the proposal is expected soon
- Parliamentary elections reason for late reaction?
- **What is the position of Croatian traders** – directive and regulation are in force, deadlines for implementation expired, platform is available as of February 2016!



Dispute resolution bodies

The dispute resolution bodies listed on this site all offer out-of-court settlement procedures. They've all been checked to make sure that they meet our standards and are registered with the national authorities.

Disclaimer

Dispute resolution bodies are currently not available on this site for some sectors and in the following countries: **Croatia, Germany, Lithuania, Luxembourg, Malta, Poland, Romania, Spain** As a consumer you might not be able to use this site to solve your dispute with traders in these countries.

Filter by country: Croatia ▾ Print

Search

Name	Country
No matching records found	

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PROBLEM, UNEQUAL POSITION OF CROATIAN TRADERS AND CONSUMERS!

- Every third Croat buys online, 71% of companies sell online



FRIDAY, 18 MARCH!

CONCLUSION

- ODR forms part of the international debate – EU, UNCITRAL...
- EU (O)ADR contributes to the DSM as integrative factor
- It brings long – term benefits for EU economy and consumer empowerment
- ADR and ODR are interlinked and complementary legislative instruments
- Technical preconditions have been put in place
- The key responsibility lies with the MSs

**THANK YOU FOR YOUR
ATTENTION!**

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