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ONLINE DISPUTE RESOLUTION TO RESOLVE CONSUMER DISPUTES FROM THE PERSPECTIVE OF EUROPEAN UNION LAW: IS THE POTENTIAL OF ODR FULLY USED?

by

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Traditional judicial mechanisms did not offer an adequate solution for cross-border electronic commerce disputes.¹ Although there has been expected great potential in solving disputes online and the rise of Online Dispute Resolution (ODR) use, the assumptions has not been confirmed yet. Only a few examples demonstrate the success stories of ODR, which is in big contrast to the continuous growth of electronic transactions and in general with the use of the online environment. The European Commission however understood the potential of ODR and it is trying to foster the use of it by adopting the ODR Regulation and the ADR Directive.² Such legal framework has been developed to apply in consumer disputes arising out of sales or providing services between an EU consumer and an EU trader.

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¹ Paragraph 25. Online dispute resolution for cross-border electronic commerce transactions. Online dispute resolution for cross-border electronic commerce transactions. United Nations Commission on International Trade Law. Working Group III (Online Dispute Resolution). Twenty-second session. Vienna, 13-17 December 2010. A/CN.9/WG.III/WP.105.

² Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No. 2006/2004 and Directive 2009/22/EC (Regulation on consumer ODR). In EUR-lex. Available from:

<<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:165:0001:0012:EN:PDF>>, (further stated as "ODR Regulation").

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 (Directive on consumer ADR). In EUR-lex. Available from:

<<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:165:0063:0079:EN:PDF>>, (further stated as "ADR Directive").

The ADR Directive sets out basic standards of ADR entities and processual rules under which it is possible to solve the dispute. Then under the ODR Regulation the complainant will be able to submit a complaint using the ODR platform. The complaint (and any related documentation) will be submitted to the ODR platform via an electronic form.

Yet it is necessary to assess the risks of above mentioned legal framework. One of the great concerns are connected with possible forum shopping while providers are registering as ADR entities. Experienced trader (unlike the consumer) is able to choose ADR provider, which is more likely to decide in his favour. Possible exclusion of online negotiation or even online tools in general is then further underlining possible concerns. The paper will thus assess main legal aspects of ADR / ODR legal framework of European Union Law and it will deal with main problematic parts of it.

KEY WORDS

Online Dispute Resolution, Alternative Dispute Resolution, ODR Regulation, ADR Directive, ODR platform, Consumer, Negotiation, Forum Shopping

1. WHAT IS ONLINE DISPUTE RESOLUTION?

Online Dispute Resolution (ODR) is generally described as “*dispute settlement which may or may not involve a binding decision being made by a third party, implying the use of online technologies to facilitate the resolution of disputes between the parties*”³ and it is described as an enormous challenge in the field of solving online disputes.⁴ Hörnle defines ODR as “*dispute resolution carried out by combining the information processing powers of computers with the networked communication facilities of the Internet.*”⁵

“A significant portion - about twenty percent - of consumers experience problems in connection with cross-border purchases of goods and services

³ Paragraph 3. Online dispute resolution for cross-border electronic commerce transactions. Online dispute resolution for cross-border electronic commerce transactions. United Nations Commission on International Trade Law. Working Group III (Online Dispute Resolution). Twenty-second session. Vienna, 13-17 December 2010. A/CN.9/WG.III/WP.105.

⁴ PHILLIPE, Miréze. Where is everyone going with online dispute resolution (ODR)? *International Business Law Journal*, 2002 (2), p. 167-211.

⁵ HÖRNLE, Julia. Cross – border Internet Dispute Resolution. *Cambridge: Cambridge University Press*, 2009. p. 74-75.

Another definitions of ODR:

KATSH, Ethan. *ODR: A Look At History*. Abdel Wahab, M., Katsh, M. and Rainey, D. (2012). Online dispute resolution. The Hague: Eleven International Pub. p. 21-33.

KAUFMANN-KOHLER, G. and SCHULTZ, T. (2004). *Online dispute resolution*. The Hague: Kluwer Law International, p. 10.

within the EU,⁶ which includes e-commerce as well. As it may seem evident on the first look that the parties would be motivated to solve their internet disputes using online environment, the use of ODR (as an appropriate solution) has been slightly disappointing so far. The possibility to solve the disputes which arose from electronic transaction is however crucial for further growth of e-commerce sector.⁷

The potential to use online settlement was predicted by many experts,⁸ however the major reason, why it has not reached the expectations so far is seen particularly in four aspects. The lack of awareness of such solution and frequently complicated accessibility is the first obstacle. Consumers frequently do not know about ODR solution and they do not know what to expect from it, which decreases the trust in ODR services. Secondly, it is costly problem to develop specific ODR software to offer full potential of user-friendly and effective solution. Another problem is seen in the lack of legal standards which would strengthen the position of ODR as convenient tool to solve consumer disputes in European Union.⁹ The last reason can be seen in lack of motivation of the parties to participate in ODR process mainly from the traders.¹⁰

European Union was however confident to promote the potential of ODR¹¹ almost from the beginning of its existence when it incorporated the requirement "to amend any legislation which is liable to hamper the use of schemes for the out-of-court settlement of disputes through electronic channels"¹²

⁶ BOGDAN, M. The New EU Regulation on Online Resolution for Consumer Disputes. *Masaryk University Journal of Law and Technology*, 9 (1) 2015., p. 155

⁷ CORTÉS, Pablo. European Union's initiatives on ADR and ODR. *Computer and Telecommunications Law Review*, 21(8) 2015, p. 257.
Recital 3. ODR Regulation.

⁸ CORTÉS, Pablo and Arno R. LODDER. Consumer Dispute Resolution Goes Online: Reflections on the Evolution of European Law for Out-of-Court Redress. *Maastricht Journal of European and Comparative Law (MJ)*. 21 (1) 2014, p. 19.

⁹ Such barrier is however arguable as the positive experience with ODR solution was offered mainly by private service providers, who designed not-formalized but highly effective rules built from bottom-up including the enforcement of their decision. Lessig is primarily mentioning domain name authorities.

LESSIG, L. (2006). *Code version 2.0*. New York: Basic Books, p. 321.

¹⁰ CORTÉS, Pablo and Arno R. LODDER. Consumer Dispute Resolution Goes Online: Reflections on the Evolution of European Law for Out-of-Court Redress. *Maastricht Journal of European and Comparative Law (MJ)*. 21 (1) 2014, p. 22-24.

¹¹ Surprisingly the ODR Regulation does not contain any definition of what Online Dispute Resolution is. To define that term correctly it is necessary to interpret it together with the ADR Directive.

¹² Recital 51. Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'). In EUR-lex.

in E-Commerce Directive.¹³ After valuable experience with ECODIR¹⁴ or ECC-Net¹⁵, the European Commission introduced recent legislative framework to solve disputes out-of-court - the ODR Regulation and the ADR Directive.

2. THE EU SOLUTION: THE ADR DIRECTIVE AND THE ODR REGULATION

The main focus of particular legislative framework is to ensure that there is an adequate ADR scheme for the disputes between trader and consumer in EU guaranteeing certain level of minimum standards¹⁶ and the ODR platform to offer cross-border solution for online disputes with the use of quick interchange of information through modern technologies.

One of the problems of ADR is that it is fragmented in Member States - offered out-of-court mechanisms are widely varying when only in some states it has long tradition (Netherlands, United Kingdom). The integration of ADR scheme to have it accessible cross-border in EU and to promote substantive consumer protection and due process is one of the main tasks of the ADR Directive. The ADR Directive however sets minimum standards¹⁷ and it *“does not stand in the way of a more far-reaching consumer protection.”*¹⁸ The ADR Directive sets out the obligation to offer alternative settlement mechanisms for consumer complaints¹⁹ including non-binding stages of ADR (negotiation, mediation) and binding stages of ADR (arbitration)²⁰ through so called ADR entity²¹. The ADR Directive *“applies to all contractual disputes, domestic and cross-border, where a trader is established*

Available from:

<<http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32000L0031&qid=1445892573364&from=CS>>.

¹³ It mentions the necessity of such mechanisms for national and cross-border dispute settlement.

¹⁴ ECODIR [online]. [cit. 12-28-2015]. Available at: <<http://www.ecodir.org/>>.

¹⁵ European Consumer Centres [online]. [cit. 12-27-2015]. Available at: <http://ec.europa.eu/consumers/solving_consumer_disputes/non-judicial_redress/ecc-net/index_en.htm>.

¹⁶ Article 5 para. 1. ADR Directive.

¹⁷ Expertise, independence and impartiality, transparency, effectiveness, fairness, liberty and legality are main principles, which pervade through ADR proceedings under the ADR Directive.

Articles 6-11. ADR Directive.

¹⁸ BOGDAN, Michael. The New EU Regulation on Online Resolution for Consumer Disputes. *Masaryk University Journal for Law and Technology*, 9 (1) 2015, p. 157.

¹⁹ Except health services and public providers of further or higher education.

in the EU and consumer is a resident of the Union”²² and it requires that the ADR decision should be made within the period of ninety days from receiving the complaint by ADR.²³

The ODR Regulation completes the ADR Directive and has to be read together with it. It has been developed to apply to the disputes arising out of online sales or service contracts between an EU consumer and an EU trader and to the disputes initiated by a trader against an EU consumer where the Member State in which the consumer is resident allows for such disputes to be resolved via ADR.²⁴

3. THE ODR PLATFORM²⁵

The ODR Regulation’s²⁶ main task is to establish pan-European ODR platform, which “*should take the form of an interactive website*²⁷ offering a single point of entry to consumers and traders seeking to resolve disputes out-of-court

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- Article 2 para. 2 letter (h), (i). ADR Directive.
- ²⁰ „This Directive may also cover, if Member States so decide, dispute resolution entities which impose solutions which are binding on the parties.“
Recital 20. ADR Directive.
- ²¹ ADR entity is any entity, which is established on a durable basis and offers the resolution of a dispute through an ADR procedure. It has to prove the durability by list of information about fees, language, procedure, binding or non-binding decision, etc.
Article 4 para. 1 letter (h). ADR Directive.
Each of the Member State has to designate a competent authority (in the Czech Republic it is the Ministry of Industry and Trade, in UK it is Chartered Trading Standards Institute non-profit organization), which will assess the quality of services offered by ADR entity and whether all the requirements are fulfilled. Each national competent authority will on its own website provide a link to this list.
Article 4 para. 1 letter (i). ADR Directive.
- ²² “However it excludes complaints handling mechanisms established by the trader, direct negotiation between the consumer and trader, and judicial settlement.”
CORTÉS, Pablo. Enforcing EU Consumer Policy Through Different Layers: Combining the Judicial and the Out-of-Court Mechanisms. *University of Leicester School of Law Research Paper* No. 14-27. [cit. 12-29-2015]. Available at: <<http://ssrn.com/abstract=2520487>>, p. 11.
- ²³ The length of the dispute can be extended only when the case is more complex.
Article 8 letter (h). ADR Directive.
- ²⁴ Article 2. ODR Regulation.
- ²⁵ Article 5. ODR Regulation.
- ²⁶ Article 22 states that the ODR platform should be working from 9th January 2016. In was however presented to the consumers 15th February 2016.
Commission launches new platform for alternative dispute resolution between consumers and online traders. [online]. European Commission. [cit. 01-10-2016] Available at: <http://ec.europa.eu/justice/newsroom/consumer-marketing/news/160108_en.htm>, or Solving disputes online: New platform for consumers and traders [online]. European Commission – press release [cit. 03-10-2016]. Available at: <http://europa.eu/rapid/press-release_IP-16-297_en.htm>.
- ²⁷ It is free-of-charge and free-to-access website established and operated by the European Commission.

which have arisen from online transactions”²⁸ thus „to allow a consumer in Member State A to file a dispute against an e-commerce business in Member State B, thus facilitating and automating the work currently carried out by the European Consumer Centres.”²⁹ The ODR Regulation highlights the importance of the ODR platform to be user-friendly and to be usable by all as far as possible.

The platform will provide general information to the parties as well as information concerning their submission or competent ADR entities, which are entitled to decide the case. The ODR platform also offers electronic case management tool where the parties can submit all necessary information online, however it does not force ADR entities to use such tool - “ADR entities should not be obliged to use the case management tool.”³⁰

If a dispute arises under the contract to which the regime of the ODR Regulation applies, the complainant party will be able to submit a complaint via ODR platform. The complaint (and any related documentation) will be submitted to the ODR platform via an electronic form and then transmitted to the respondent party. The parties also have to agree on ADR entity (specific one or from offered list) which will deal with the case.³¹ Then the platform will automatically transmit the complaint to chosen ADR entity, which will inform the parties whether it will deal with the dispute or refuse it.³²

The important role will be also played by ODR contact points, which will hopefully provide decent support and will try to raise the use of whole procedure of ODR in the way that small traders and consumers

²⁸ The ODR platform will allow consumers and traders to submit complaints by filling in an electronic complaint form, which will be available in all official languages of EU and it offers automated translation on the decent level to be able to translate basic information necessary for the dispute settlement. It will also allow the parties to attach relevant documents.

Recital 19. ODR Regulation.

²⁹ HÖRNLE, Julia. Encouraging Online Dispute Resolution in the EU and Beyond- Keeping Costs Low or Standards High? *European Law Review*, 38 2013, p. 200.

³⁰ Recital 18. ODR Regulation.

³¹ If there is no agreement of the parties on ADR entity, dispute resolution is terminated, because ADR is fully dependent on the will of the parties to commence decision making process. The ODR platform will also provide the list of competent ADR entities including general information such as contact details, ADR procedure, fees or language of proceedings.

Article 9 para. 3 letter (a). ODR Regulation.

³² If ADR entity agrees to decide the case it should be made again within the period of ninety days from receiving the complaint.

Article 8 letter (h). ADR Directive.

will not be left without access to the decent online solution of their problems.

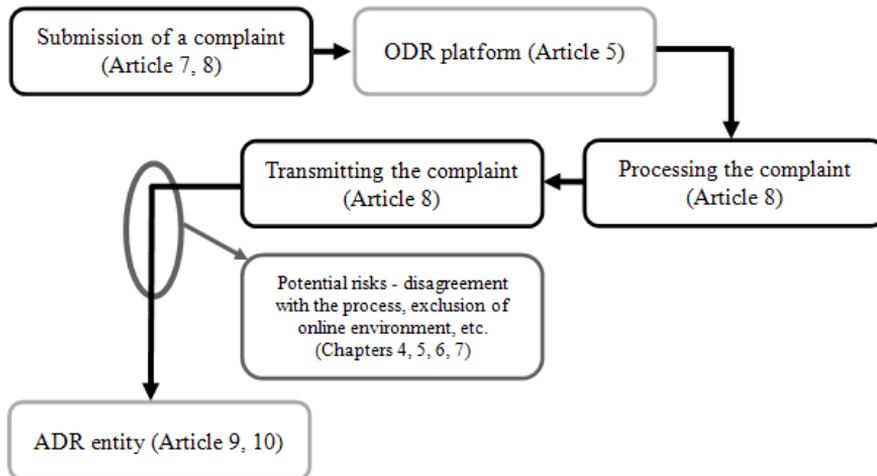


Figure 1: Legal scheme of processing the information at the ODR platform under the ODR Regulation and potential risks as further described in chapters 4, 5, 6, 7

4. CONFUSION IN POSSIBILITY TO USE THE ODR PLATFORM AND ADR SCHEME

The ODR Regulation was not originally meant to apply for the domestic disputes for which it was sharply criticized and then redrafted.³³ It is decisive for the Regulation whether the contract was concluded online more than if it was performed online. The Regulation surprisingly does not require “that the ADR procedure as such, after the competent ADR entity has been determined, be conducted through the ODR platform”³⁴ which is unfortunate and does not motivate traders to use online environment

³³ It was described that when there is the limitation of the ODR platform only to the international disputes it is unlikely that it will find more favourable reception with online auction users and there is no reason, why it should not be applied also to local disputes.

RIEFA, Christine. *Consumer Protection and Online Auction Platforms: Towards a Safer Legal Framework*. Ashgate: London, 2015, p. 151.

It was thus suggested on the basis of research report that “the scope of the ODR proposal should be extended to domestic disputes” as well.

MICKLITZ, Hans and Giovanni SARTOR. *Assessing The Scope Of European Online Dispute Resolution Platform* [online]. Directorate General For Internal Policies Policy Department A: Scientific And Economic Policy [cit. 10-26-2015] Available at: <[http://www.europarl.europa.eu/RegData/etudes/note/join/2012/475102/IPOL-IMCO_NT\(2012\)475102_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/note/join/2012/475102/IPOL-IMCO_NT(2012)475102_EN.pdf)>. P. 6.

³⁴ BOGDAN, Michael. The New EU Regulation on Online Resolution for Consumer Disputes. *Masaryk University Journal for Law and Technology*, 9 (1) 2015, p. 158-159.

for dispute settlement. Main purpose of the ODR platform is mainly to increase the awareness of the parties and to provide decent technology to ADR entities to enable them to use online environment while offering their services. In accordance with above stated, it is unclear if the traders will be ready to use alternative dispute settlement methods in combination with the ODR platform.³⁵

*“Traders [...] shall provide on their websites an electronic link to the ODR platform. That link shall be easily accessible for consumers.”*³⁶ This does not itself however mean that the traders have to participate in ODR process and it does not force the traders to do so. This can lead to the confusion of the consumers and could mislead them by linking them to the ODR platform without any certainty that the dispute will be really dealt within ODR. As the platform is meant to fulfil the potential of ODR this may seem as misinforming step. It could be eliminated by referencing to the ODR platform at the trader’s website only in the case he is willing to participate in it or by clear statement that it is “only” the possibility which does not have to be supported by the trader.³⁷

5. DOES THE ODR REGULATION USE FULL POTENTIAL OF ONLINE DISPUTE RESOLUTION METHODS?

Negotiation is generally considered as the initial stage of the alternative proceedings where the parties have the possibility of resolving the dispute by active communication to reach mutual agreement. While it may seem at first glance that this kind of solution of the dispute does not motivate parties to end their dispute much, the opposite is true especially in the online environment. Modern technologies in this stage show their greatest potential and allow the parties to settle the dispute quickly

³⁵ Willingness of the consumer to use the ODR platform is mainly based on conviction, motivation and awareness.

³⁶ Such information has to be provided also in general terms and conditions. Member States are also obliged to promote the ODR platform and to encourage consumer or business associations to provide link to the ODR platform.

Article 14 para. 1. ODR Regulation.

The list of ADR entities (as mentioned by article 20 para. 4 of the ADR Directive) is also published at the pages of the ODR platform.

Article 14 para. 4. ODR Regulation.

³⁷ Such approach has actually been already used in the case of Germany or Slovenia. All the traders who are not willing to use ODR scheme per se have to put clear statement of such approach in their terms and conditions and also to the website.

CORTÉS, Pablo. The impact of EU law in the ADR landscape in Italy, Spain and the UK: time for change or missed opportunity? *ERA Forum*, 16 (2) 2015, p. 128.

and efficiently just by using convenient environment to negotiate between each other.³⁸ It is possible to use specifically modified software tools that assist and advise how to achieve the best outcome that will benefit both parties.³⁹ Negotiation in ODR is thus generally considered to be crucial in resolving online disputes whilst in the initial phase it is able to resolve the highest number of the disputes.⁴⁰ Thus it is highly recommended that negotiation should be always included in consumer Online Dispute Resolution if possible⁴¹ because “*early settlements without the intervention of neutral third party [as the negotiation is - note by author] will be the most (if not the only) cost-efficient way to resolve low-value consumer disputes.*”⁴²

The main role of the ODR platform is to connect consumer and trader with nationally approved ADR entity.⁴³ The ODR platform itself does not include the possibility to negotiate; this possibility is kept under the scheme of the ADR Directive thus fully under the decision of ADR entities. As it is expected that the ODR platform will receive high number of disputes the exclusion of online negotiation from it is inappropriate as it will prolong the administration of the case while communicating it to the ADR entity. As the ADR entity is not required to conduct the following ADR procedure as such through the ODR platform (or to use online environment) it can even exclude online negotiation and whole potential of such dispute settlement could be lost. As it is hard to predict if the ADR entities will be trying to avoid online negotiation (but it is still probable) it is highly recommended to introduce at least a system of reputation, which would

³⁸ According to the statistics provided by US auction house eBay 80% of all arising disputes are resolved within online negotiation phase between the parties without any intervention of a third party. This is possible by using appropriately designed platform and by the possibility of the parties to meet in the online environment and to exploit the potential of modern technologies.

KATSH, Ethan, Orna RABOVICH-EINY. *Lessons from Online Dispute Resolution for Dispute Systems Design*. Abdel Wahab, M., Katsh, M. and Rainey, D. (2012). *Online dispute resolution*. The Hague: Eleven International Pub, p. 56.

³⁹ The software solution emulates the third neutral party. The software can also examine information inserted by the parties and evaluates whether it is possible to reach the agreement or not.

⁴⁰ HÖRNLE, Julia. Encouraging Online Dispute Resolution in the EU and Beyond - Keeping Costs Low or Standards High? *European Law Review*, 38, 2013., p. 198.

⁴¹ ROGERS, N. H., Robert C. BARDONE, Frank E. A. SANDER, Craig A. MCEVEN. *Designing Systems and Process for Managing disputes*. Aspen Publishers: New York (2013). p. 24.

⁴² CORTÉS, Pablo and Arno R. LODDER. Consumer Dispute Resolution Goes Online: Reflections on the Evolution of European Law for Out-of-Court Redress. *Maastricht Journal of European and Comparative Law (MJ)*. 21 (1) 2014, p. 35.

⁴³ Thus it is not the role of the ODR platform to offer any (even basic) dispute resolution services. It can be said that the ODR platform works only as point of contact (clearing house).

force ADR entities to provide large scale of different services. This solution could possibly help to motivate them also in the case when the ADR entities decide not to use online environment at all.⁴⁴

The ODR platform also offers the possibility to use electronic case management tool. If the parties decide to use case management tool under the ODR platform but later on the ADR entity will not be willing to use it as well⁴⁵, the process will then turn into classical online⁴⁶ or even offline exchange of information between the parties. This has to be seen as inappropriate situation which should be eliminated by forcing ADR entity to use such tool in the case that parties have already started to use it.

6. LANGUAGE ISSUES

The ODR platform allows consumers and traders to submit complaints by filling in an electronic complaint form⁴⁷ available in all official languages of EU.⁴⁸ It does not offer an online procedure; it offers spot where the complaint can be filed and then redirects the parties to ADR entities.

The ODR platform is designed *“to provide the parties and ADR entity with the translation of information which is necessary for the resolution of the dispute and is exchanged through the ODR platform.”*⁴⁹ By the ODR Regulation it is described that the ODR platform will translate and transmit the complaint to the respondent party.⁵⁰ Only the complaint and the form itself (webpage) will be translated under the requirement of the ODR platform.⁵¹ After processing the dispute it is advanced to the ADR entity

⁴⁴ The author of this article is highly surprised, that the decision of ADR entity not to use online environment is followed even after the parties have agreed on using the ODR platform. Such benevolence will cause lower use of online environment thus the potential and advantages of ODR will not be utilized.

⁴⁵ *“ADR entities should not be obliged to use the case management tool”* offered by the ODR platform.

Recital 18. ODR Regulation.

⁴⁶ Such as exchange of email communication.

⁴⁷ It is also advisable to avoid vague statement concerning accuracy of information inserted to the ODR platform. *„Only data which are accurate, relevant and not excessive in relation to the purposes for which they are collected shall be processed through the electronic complaint form and its attachments.”* Such statement is rather useless because it depends only at the point of view of the quarrelling parties which are likely to have different opinions.

Article 8 para. 5. ODR Regulation.

⁴⁸ Recital 18. ODR Regulation.

⁴⁹ Article 5 para. 4 letter (e). ODR Regulation.

⁵⁰ Article 9 para. 3, 4. ODR Regulation.

⁵¹ *“The ODR platform should offer an electronic translation function which enables the parties and the ADR entity to have the information which is exchanged through the ODR platform and is necessary for the resolution of the dispute translated, where appropriate.”* Thus the parties should be offered by tool which will at least somehow assist them in other phases of the dispute.

which can choose the language of the dispute.⁵² This is seen as confusing for the parties⁵³ and could be serious game changer during the dispute.⁵⁴

7. POSSIBLE RISK OF FORUM SHOPPING?

“Member States shall ensure that dispute resolution entities established on their territories, which intend to qualify as ADR entities [...] notify to the competent authority”⁵⁵ with contact details, ADR procedure, fees, languages of proceedings, etc. “Each competent authority shall assess [...], whether the dispute resolution entities notified to it [...] comply with the quality requirements set out.”⁵⁶ Thus to become certified ADR entity ADR providers have to comply with minimum standards listed in the ADR Directive. Different national authorities can however set up higher level than it is mentioned by the ADR Directive. If ADR provider will not obtain certification in one state from national authority (because of higher standard requirements), there is no obstacle to choose the state with lower standard and to certify as ADR entity there.

Another concern can be seen in disproportion between experienced trader (“repetitive player”) and unexperienced consumer (“single-shot player”). The traders can choose more favourable ADR entity, which is likely to present better winning ratios of the disputes. This can lead possibly to forum shopping as the trader will try to choose most favourable ADR entity⁵⁷ for him to win the case.⁵⁸ Hopefully such unsuitable situation will be correlated by the market itself (concurrency of the traders will affect their reputation) and possible choice of “more suitable” ADR entity will be eliminated by their increasing number.

Recital 18. ODR Regulation.

⁵² Article 9 para. 5 letter (c). ODR Regulation.

⁵³ The parties have naturally still the possibility to disagree with the dispute. The intention is however generally to motivate them to settle it successfully rather than discourage them.

⁵⁴ It could be suggested that the process will use the language which was used during the transaction, but to use the language for buying of the product is something else than to use it for dispute settlement.

⁵⁵ Article 19. ADR Directive.

⁵⁶ Article 20 para. 1. ADR Directive.

⁵⁷ Possible advantage for the trader could be also seen in higher fees which need to be paid to commence ADR process. This can in fact easily demotivate the consumer as it could appear to him that it will be better to give up possible dispute settlement.

⁵⁸ This situation is comparable to domain-name dispute resolution, where repetitive users of dispute resolution know the environment and they can easily choose dispute settlement provider, which is able to offer them better winning rate. See more at:

LOUTOCKÝ, Pavel. Are We Getting Good Decisions by Top-level Domain Name Dispute Resolution Providers? *Masaryk University Journal of Law and Technology*, 9 (1) 2015, p. 111-129.

8. CONCLUSION

ODR scheme in general was meant to boost the development of e-commerce serving as an appropriate and efficient tool, since it appears as the best (and sometimes the only) option for solving low-value high-volume disputes. The ADR Directive and the ODR Regulation has offered ODR framework for EU however the concerns stated above are seemed as so important that it could lead to much lower use of such offered solution for consumer e-commerce disputes. If EU ODR scheme is meant to be functioning properly it is necessary at least to avoid possible confusion of the consumers concerning using ODR services and probably to integrate the possibility to negotiate online directly through the ODR platform.

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