Outcome of the workshop on
Online Dispute Resolution (ODR) and ODR-cooperation in Europe

Monday, 09 October 2006, in Kehl, 9 – 17 h, in the Villa Rehfus /
Kompetenzzentrum für grenzüberschreitende und europäische Fragen

i. Participants
ii. Presentation of ODR bodies in Europe
iii. Typical Cases/Fraud Cases
iv. Long-term financing of ODR bodies
v. Draft framework for ODR-cooperation in Europe

i) Participants
AYED, Marta - Confianza Online / Spain
BERGER, Julia Anna – European Consumer Centre / Denmark
BÖHM, Stefan – European Consumer Centre Germany (Kehl)
BRAUN, Felix – European Consumer Centre Germany (Kehl)
FEDY, Fabien – European Consumer Centre France (Kehl)
GANGOLY, Jürgen H. – Internet Ombudsmann / Austria
HUTCHINSON, Brian – University College Dublin – ECODIR project / Ireland
KODLOVA, Hana - Consumer Policy Department - Ministry of Industry and Trade / Czech Republic
VANAGA, Vivita – Consumer Rights Protection Centre / Latvia
PENACOBA, Maria Luz – European Consumer Centre / Spain
MAYER, Erika – Infomediator / Hungary
MÜNSTERMANN, Susanna – eCommerce Contact Point / Germany
NORQUIST, Fredrik – European Consumer Centre / Sweden
SVATA, Zdeněk – Consumer Policy Department - Ministry of Industry and Trade / Czech Republic
LE TALLEC, Marie-Françoise – Médiateur du Net / France
REGAZZONI, Roberta – Chamber of National and International Arbitration of Milan – Italy

ii) Presentation of ODR bodies in Europe
1) The Electronic Consumer Dispute Resolution Project ECODIR was founded in 2000 and received financial support by the European Commission and the Irish Government. At that time the idea of online dispute resolution was still brand-new and so this project adopted an academic approach. The participants aimed at identifying legal and economic barriers to online dispute resolution in the e-commerce sector. According to their experience it was (is) very difficult to market online dispute resolution. Therefore official bodies should support the marketing of ODR bodies. To get the businesses involved in the game of mediation, the ODR bodies should underline the added value for the companies.
2) The French “Forum des droits sur l’internet” was founded in 2001. It is supported by public authorities as well by private companies. In the last two year, nearly 9000 complaints were received and 4700 cases handled. 45 % of the received complaints fell outside the scope of their competencies. 88% of the cases have been resolved. Mainly there are two sorts of complaints: Online shopping and access to the internet. According to Mrs Le Tallec's experience, it is very difficult to settle online disputes with foreign companies; therefore a closer cooperation between the ODR bodies and the ECC-Net would be a strong support for their work.

Currently a draft law is discussed in France which should oblige companies to provide an access to an Alternative Dispute Resolution body, whenever the consumer isn’t satisfied with the answer of the customer service. The mediator would be intern or extern to the company but the general rule is that he has to remain independent. As a result the Médiateur du Net received already some requests from companies asking for its participation as an external ADR-body. This development will not only increase the acceptance of online mediation but will also have an effect on the long term financing of the organisation.

3) The Spanish organisations AUTOCONTROL and AECEM decided to join their efforts and knowledge to establish an integral self regulation system, in order to avoid the undesirable proliferation of different systems which would create confusion among consumers and on the marketplace. Based on two codes of conduct and on the transposition of the e-commerce directive in Spanish law, Confianza Online was launched in 2002. Confianza Online demands that their members have to comply with their Codes and accept the online dispute resolution. In return the businesses can use the Trustmark of Confianza Online for their own promotion and advertising. In 2005 Confianza Online was granted the Public Trustmark by the Spanish competent statutory authorities, so it is the first and only system supported with such official recognition.

4) RisolviOnline, a public and institutional service, was founded in 2002 by the Arbitration Chamber of Milan. It mediates as a neutral third party in order to encourage the parties to find an amicable solution to their problem. The figures of requests for mediation are comparatively low; in 2005 they had 23 requests. The main problem remains that the cultural awareness on ADR and ODR in Italy is still very low. Italians remain convinced that only a court decision will offer a solution to their problems.

iii) Typical Cases/Fraud Cases

1) Fredrik Nordquist, ECC Sweden, Fraud Cases and ODR procedures
In 2005 3.780 e-commerce related disputes have been lodged within the 23 offices of the ECC-Net. The number of e-commerce cases is significantly rising each year. The reason for this increase is not necessarily that e-commerce businesses provide poor service or bad quality products but the number of e-commerce cross border transactions is considerably rising each year. Germany has received the largest amount of cases as most web traders are based there. Most complaints came from Swedish consumers, but also in France (Nº 2 with 200 complaints) there has been a large increase of cases in the last two years. The reason for the large number of complaints in Scandinavian Countries is that Scandinavian consumers are regular e-commerce shoppers and buy a lot abroad as the prices are higher in Scandinavia. Furthermore, the level of consumer protection concerning cross border disputes is high, the consumers are well informed about their rights and know to whom they have to address their complaint.

2) Mr. Gangoly, ODR Austria, Recent complaints
Concerning the so called “free services” (e.g. simsen.de), the watchlist available on the website of the Austrian ODR contains approximately 50 dubious service providers. The main problem is that these service providers change constantly their offices, addresses, and websites. Often these services simply serve to collect data from consumers. To
improve consumer protection in these cases, general proactive information is needed. So the Ombudsmann offers preventive information on his website. Furthermore the Ombudsmann has recently launched a special education material project: Consumers should be aware of their rights, therefore it has to become a regular part of school lessons. This material could be a useful example for many countries.

Another new project initiated by the Austrian Ombudsmann (www.sms-sperre.at) makes it possible to block your mobile phone for sms for which you would have to pay when you receive them. Concerning the online auctions, the Ombudsmann observed a decrease of complaints thanks to a good cooperation with online auction platforms (Austria was the first country in which Ebay set up a consumer hotline, no acceptance of payments via Western Union any more). Concerning mp3 downloads an education project was initiated to avoid problematic download services.

iv) Long-term financing of ODR bodies

Mr. Gangoly, ODR Austria

The Austrian Internet Ombudsmann experienced already seven ways to run and finance an ODR Service:

- Private Sponsors: Companies, Foundation, Trade and Labour Organisations and NGOs
- Consumers (fixed fee, membership fee, donations, percentage of the case value)
- Online Shops (trustmark, codes of conduct)
- Insurance companies (combination of the ODR system with legal protection insurances)
- Own products / services offered (Consulting, events, publication)
- Public Sector (State and EU-Subventions, contracts for work labour...)
- No cash financing at all (voluntary workers)

According to their experience a long term financing by the private sector won’t work. The companies won’t support an ODR body, because the trust mark as marketing tool is not interesting enough for the companies.

Mrs. Ayed, ODR in Spain

In the beginning they also had difficulties to get financial support from the private sector; the private parties did not see the benefit of ODR for them. After three years, the ODR was able to convince companies that the trust mark could be used as a good marketing tool. But it is true that it takes a lot of time and work in order to convince the companies of the benefits.

Mr. Gangoly pointed out the importance of remaining independent despite private funding. He therefore suggested cooperating with umbrella organisations financed by the industry or with major companies such as IBM, but not with particular/single smaller companies. Another problem lies in the fact that if one has a particular company financing, the competitor would probably not want to participate in an ADR-procedure sponsored by his business rival.

v) Draft framework for ODR-cooperation in Europe

Further to the ODR-Workshop on 9th of October 2006 in Kehl, the eCommerce Contact Point Germany, the European Consumer Centres France and Germany took note of remarks and observations made by all participants during that day and drafted the resolutions for collaboration of ODR as follows:
Immediate Cooperation ODR, eCommerce Contact Points and ECC-Net

1. Informal exchange of information concerning fraud cases, national legislation on ADR (such as sms-services, see Mr. Gangoly’s presentation), case law in the field of ecommerce, etc.

2. Follow-up meeting in 2007 and update of trends in cases concerning ecommerce and frauds on the Internet

3. Link on the website of each consumer-ODR to the other trader-ODRs and information in the consumer-ODR language concerning proceedings and scope of competencies of trader-ODR

4. Webpage with basic information translated into English (could be done with the support of the national ECC) and maybe a registration form as well (ecommerce contact point and ECC can also be of assistance)

5. Transmission of cross border cases concerning traders located in another country. The case can be transmitted through the ECC-Net for translation service. However, a direct transmission for clear-cut cases (such as non-delivery) may be more efficient. The case can be sent to the contact person at the ODR.

Long term cooperation possibilities

1. Common internet portal in different languages with information on ODR and links to the different mediation services (with the support of the European Commission). This would be possible if the ODR has been notified at the European Commission as complying with the 1998 and 2001 recommendations.

2. Common joint projects, information campaigns, consultancy work, common statistics, code of conduct, creation of a European e-commerce trust mark

It could be interesting to apply for a grant of the European Commission and discuss possible funding for these projects.

(FB, SB / FF, SM / BS)

For further information please contact:

Susanna Münstermann - eCommerce-Verbindungsstelle Deutschland, Kehl
Tel. 0049 (0) 7851 / 99148-19, Fax: -11, E-Mail: muenstermann@euroinfo-kehl.com

Felix Braun - European Consumer Centre Germany, Kehl
Tel. 0049 (0) 7851 / 99148-21, Fax: -11, E-Mail: braun@euroinfo-kehl.com

Fabien Fédy - European Consumer Centre France (Kehl / Germany)
Tel. 0049 (0) 7851 / 99148-25, Fax: -11, E-Mail: fedy@euroinfo-kehl.com
From France also : 0 820 200 999 (9 cents / minute)