
Online Dispute Resolution (ODR) in Public Administration: Providing Value to Citizens through the New Educational Structure of Democratic e-Governance in EU

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Abstract: *This article examines the significance of the emergence of Online Dispute Resolution (ODR) in European Public Administration as a useful set of democratic tools and educational techniques for resolving disputes – both online and offline. It examines the nature and scope of ODR development in emerging field of e-governance and provides different examples to illustrate essential, embedded concepts and modes of good practice. Some Member states have already adopted or considering applicability of ODR platform as a tool for digital e-government, so ODR has already proved that it can provide effective resolution for at least some disputes, but unfortunately has not yet reached its complete potential. The proposed future challenges encourage the use of ODR systems in Public Administration as an educational mechanism for consensual cultural change in the sense of democratic good e-governance.*

Key words: Online Dispute Resolution, citizen and consumer protection, European Public Administration, e-disputes, democratic and educational values, good e-governance.

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Introduction

Modern democracies need educated citizens and civil servants who work hand in hand together to survive and to grow. In today's Internet era, efficient public administration promotes and strengthens democratic values through electronic governance (*e-governance*), which combines Electronic Democracy (e-democracy), Electronic Government (e-government) and Electronic Business (e-business). After Boyte

(2005, 518) governance intimates a paradigm shift in the meaning of democracy and public body (civic agency), where the shift involves a move from citizens as simply voters, volunteers, and consumers to citizens as problem solvers and co-creators of public goods; from public leaders as public affairs professionals and politicians, as public service providers and solutions to partners, educators, and organizers of citizen action; and from democracy as elections to *democratic society*. In democratic societies, education system has dual responsibility to equip young people and students with both knowledge and skills of basic liberties and opportunities, as well as ability to participate in the processes of democratic governance.

The opportunities for good life with democratic values requires many skills and capacities, not just literacy, good manners and tolerance, but also understanding and respect for reasonable differences and changes. Every community (natural or virtual) will unavoidable experience change and conflict. Lack of education and effective deliberation with integration and certainty are the consequence of nowadays rapid interaction through information and communication technology (ICT), which is the driver for constant changes and arisen of new conflicts (*e-disputes*). Conflicts may be in our daily lives deleterious or beneficial – whether you see a change as a conflict or a valuable lesson depends only on our prospective (Ibbs et al. 2001, 159), which we form by education from different environments. Governments need to deal with the entire range of disputes in society, mostly on the extensive area of citizen and consumer protection – whether under civil or administrative law. A wide range of goods and services are today available also online, but there is no truly adequate mechanism for legal certainty. Therefore, the important role for government is providing value to citizens and consumers through e-governance with easy-use mechanisms to help resolve small value disputes, which arise from e-commerce transactions.

After EPRS (2016, 1-3) e-commerce can offer reduced transaction costs, more flexible contract terms with lower prices and broader choices to consumers, and is currently widespread in sectors of electronics, clothing, shoes and digital content. The overall value of business/government-to-consumers (B2C or G2C) e-commerce is estimated at almost 2% of the EU's GDP¹. According to the European Commission (hereinafter: EC), in 2014, 44% of EU consumers purchased online domestically and 15% from other EU countries, but in 2015 one in three consumers experienced problems with online buying, which mainly concern delivery and product conformity. The Consumer Conditions Scoreboard EU (2015) revealed that cross-border purchases cause European consumers number of problems related with limited awareness of some key consumer rights guaranteed by EU legislation.² Scoreboard indicates a quarter of all consumers with problems did not complain, they believe in low chances of success and due to the lack of awareness of availability of information about the complaint procedure. Meanwhile, consumers were most satisfied with alternative dispute resolution (hereinafter: ADR) complaint-handling bodies, followed by those who complained directly to the retailers or service providers.³

In this emerging Internet era, Online Dispute Resolution (ODR) – so called online alternative dispute resolution (ADR) – potentially offers a useful set of tools and educational techniques for resolving

¹ With tangible goods and offline services according for the bulk of online spending (in average 760 EUR in 2014), followed by online services and digital content (94 and 107 EUR).

² Only 9 % of all respondents were familiar with the right not to pay for or send back unsolicited product, the right to a free repair or replacement of defective goods.

³ Of all cases of complaints dealt with by the European Consumer Centers (ECC) across the EU in the past 10 years, 50,000 involved e-commerce and almost 5,000 were referred to some form of ADR. Failure to deliver goods, contract cancellation, and goods that may be faulty or not compliant with the order regularly account for around 45% of all complaints received by ECCs.

disputes – both online and offline. EU has proposed applicable ODR platform as a tool for digital e-government specially to resolve cross-border e-disputes. EU ODR platform is now in last developing stage, so has not yet reached its whole potential. Namely, EU has faced different barriers caused by translation and administrative dilemmas according to existence of legal gaps across Member states. Despite existing barriers, EU goal has been set – till the end of 2018 every Member state is obligated to introduce ODR platform in their (digital) legal system. The paper focuses on the ODR development in European public administration with the new ODR regulation combined with EU Administrative Law, which bit is reforming e-governance towards citizens' empowerment with efficient democratic mechanisms for resolving disputes between EU entities with private or public interests. Good practices of efficient ODR systems are showing new ways of resolving wide range of e-disputes and can be seen as an added value to citizens as consumers and businesses within educational component of e-governance under one Public Administration umbrella in EU. EU's priority is to face challenges regarding supervision and financing ODR platforms, as well as its functioning according to translation problems and purely internal non-harmonized ODR systems. Future dynamics encourages the use of ODR system in European Public Administration as an efficient mechanism for consensual cultural change in the sense of innovative democratic e-governance.

ODR in European Public Administration

The efficiency of public administration is crucial to both economic productivity and social welfare. As Professor John Key (2004) has stated: „*Productivity is not simply the result of the availability of capital and technology, of differences in the skills of individual workers. In the modern world, skills can be developed everywhere, and capital and technology flow freely between countries. The economic lives of individuals are the product of the systems within which they operate. The difference between rich and poor states is the result of differences in the quality of their economic institutions*”. Importance goes to the governance of public institutions that manage economic and social interactions within a country, which have to fulfil a number of key criteria: absence of corruption, a competition and procurement policy, an effective legal environment with efficient judicial system. Good governance and legal certainty are necessary for a stable business environment (European Commission 2015, 10-11).⁴ The rapid development of the emerging ICT has all the attributes of added value to the process of good governance, what indicates new opportunities for growth with new education in all states. The role and responsibility of governments is targeting individuals, communities and the organizations of civil society with information and knowledge, what create conditions for the empowerment of the civil society, such as enabling participation in the information society, creating the infrastructure for the information society, fostering a sense of citizenship and cultural identity using ICTs (Okot-Uma 2000, 4).

ICT and Public Administration cannot exist without each other. Governments worldwide have used ICT to create new dimensions of economic and social progress. Public administration renovated with ICT exist online as *e-governance*, which includes three dimensions (Okot-Uma 2000, 5-11):

- **E-democracy** refers to processes and structures that encompass all forms of e-communication between government (electorate) and citizen (elected) for a more open government (interaction with a civil society) and citizen access to information and knowledge (about the political process, services, choice availability). More informed citizen is in a better position to exercise its rights, play its role, carry out its responsibilities and define its relationships to others. Citizens as

⁴ Good governance is considered the ability to achieve stated policy goals, in line with the principles and values of integrity, rule of law, transparency, accountability, effectiveness and efficiency, among others.

consumers expect to be involved in the process of securing services to suit their needs, and to receive a higher standard of ‘customer care’ from government. Main principles of information management are access, process to information, awareness of information, communication and learning the experience, involvement and participation in decision-making process.

- **E-government** refers to the processes and structures pertinent to the electronic delivery of government services to the public. This dimension strongly depends on governments’ ‘branches’ (administration, political, civil services, and parliament and judiciary functions) and ‘levels’ (provincial/regional/state/county or local functionality) and information sharing as a service delivery within and in-between. There is no common e-government structure across Member states, it is still in developing stage, but the markets’ need is through public-private partnership (PPP) find common solution for the future. Normally, public service delivery touches different fields as citizen live events, such as information regarding passports, local government, social security, health, transport, defense, public services support, national savings, water, inland revenue, employment, power utility, environment and others.
- **E-business** refers to a broader definition of Electronic Commerce (e-commerce), not just buying and selling but also servicing customers/consumers and collaborating with business partners, and conducting electronic transactions within an organizational entity.

E-government with e-business structures various relationships for exchanging information and commodities or sale of goods and services, which can be divided in following categories as seen in figure 1 below. Most important e-commerce relationships in consumer dispute are: government-to-government (G2G), government-to-business (G2B), government-to-citizen/consumer/public (G2C), citizen/consumer/public-to-government (C2G), citizen/consumer-to-business/public (C2B), government-to-business (G2B), business/private-to-government (B2G), intra-government (e-business).

LEGAL RELATIONSHIPS	Government	Business	Consumer	Employee
Government (G)	G2G	G2B	G2C	G2E
Business (B)	B2G	B2B	B2C	B2E
Consumer or Citizen (C)	C2G	C2B	C2C	C2E
Employee (E)	E2G	E2B	E2C	E2E

Figure 1: E-commerce Matrix (Agar 2012, and authors own)

After Jeretina (2016, 197) parties can be interpreted by various legal regulation with different legal conceptions under civil or administrative legal frameworks. Furthermore, theoretically and normatively there is no consensus on the definition of the parties, which is causing divergences in various legal relationships (e.g. C2B or C2G, B2C or G2C, B2B or G2G, B2G or G2B) with distinctive legal nature (e.g. interweaving of public or private interests). From figure 2 we can see complexity of legal relationships that occur within e-commerce transactions.

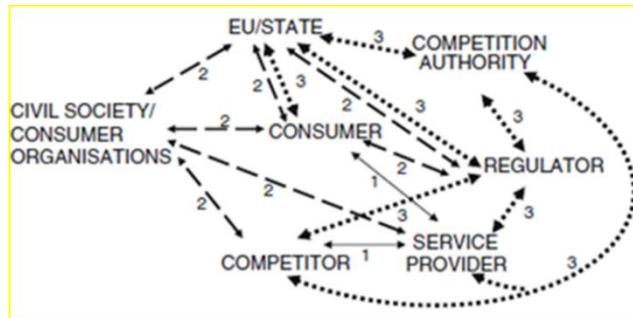


Figure 2: Complex e-commerce relationships between different actors in EU (Szyszczak, Davies 2011, 174).

Despite divergences in definitions of parties, governments could provide credible information available online, mostly as 'know how' to resolve small value e-disputes. Namely, three basic elements⁵ are essential in promoting confidence in the electronic medium as a vehicle for e-business. Additionally, **ODR** can be seen as a new (forth) dimension of e-governance. The development of ODR as innovation in European Public Administration introduce us to various challenges dealing with new conflict resolution management. The development of new conflict resolution management online (ODR) or offline (ADR), which focus on understanding conflict and on developing processes to deal with it, has provided both the theoretical background and the practical applications needed to transform conflicts into opportunities for learning and growing.

ODR as a tool with democratic values

ODR is considered as an online ADR or out-of-court resolution of e-disputes (mostly cross-border disputes) via digital platforms, which helps citizens as consumers resolve their disputes with traders when they have problems with purchased good or services in an internal market (EU). It is a fast and more efficient tool with the presence of a third virtual-neutral party (a mediator, arbitrator, conciliator, ombudsman or similar person), who facilitates in order to reach a common settlement in resolving disputes between consumers or citizens (C) and businesses as private or public entities (B or G).⁶ "Virtual mediators" have the important role and increased responsibility for virtually facilitate parties from different States to the consensual decision on digital platform. The ODR platform can be considered as a "forth party" with the role of technology, which frames the parties' communication and provides the value traditionally provided by a mediator (Katsh, Rifkin 2001). The "fourth party" is metaphorical like a mediator that can play different roles with a different impact in different contexts. In ODR process, the "fourth party" can provide some of the democratic values often found in mediation, by assisting the parties to identify common interests and by helping them to generate mutually acceptable solutions to reach consensual settlement. In other contexts, where there is a virtual mediator, the "fourth party" can alter the role(s) of a third party since the third party will increasingly be interacting with an electronic ally as well as with the disputants (Katsh 2006, 5).

⁵ 1. A trusted business environment (based on public key infrastructure, PKI); 2. Suitable legal framework (which recognizes electronic (digital) signatures as having legal effect and validity); and 3. Valid laws of evidence (providing for the admissibility of electronic documents and electronic signatures in legal proceedings).

⁶ 'Trader' means any natural persons, or any legal person irrespective of whether privately or publicly owned, who is acting, including through any person acting in his name or on his behalf, for purposes relating to his trade, business, craft or profession. Directive on CADR 11/2013/EU, article 4. 'Consumer' means any natural person who is acting for purposes which are outside his trade, business, craft or profession. Directive on CADR 11/2013/EU, article 4.

After Conley Taylor (Agustí et al. 2009, 90) till 2004 existed more than **115 different ODR sites** that were launched with examples in each continent (including Africa, Peru and Philippines). From figure 3 we can see that most of this sites were launched in Amerika and Europe, but are growing also in Asia Pacific, so we can say number can be today doubled. Most known ODR sites that handled most number of disputes are: **SquareTrade** (over 1.5 million), **Cybersettle** (over 100,000), **eBuy** (over 60 million received complaints), **iCouthouse** (11,094 cases filed), **clickNsettle**, **iLEVEL**, **Smartsettle**, **WebTrader** (over 2,000 cases each), **Youstice**, **Amazon**, **TRUSTe** etc.

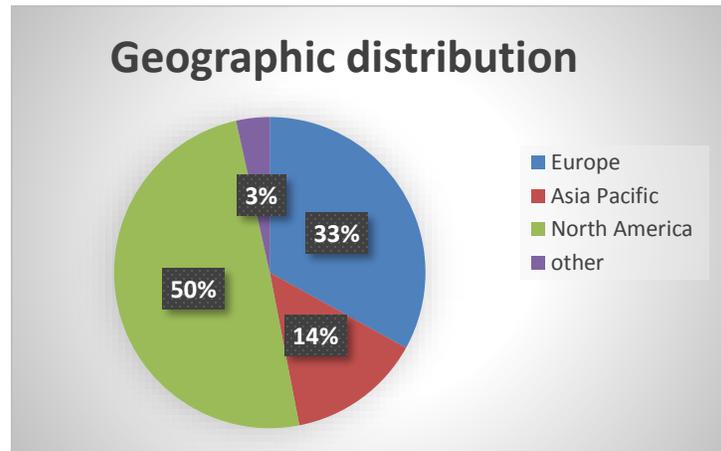


Figure 3: Geographic distribution of ODR sites across continents (Tylor 2004, 3).

Before main ODR systems have rely on fixed communication technologies (static computers), while today these system can be provided also with mobile technologies, tablets and other technologies. Most of these ODR platforms use different ODR schemes and have formal policies and procedures, including management protocols, rules and standards of conduct, codes of practice and privacy policies. Figure 4 shows most popular used ODR schemes, which are mediation, arbitration and complaint handling.

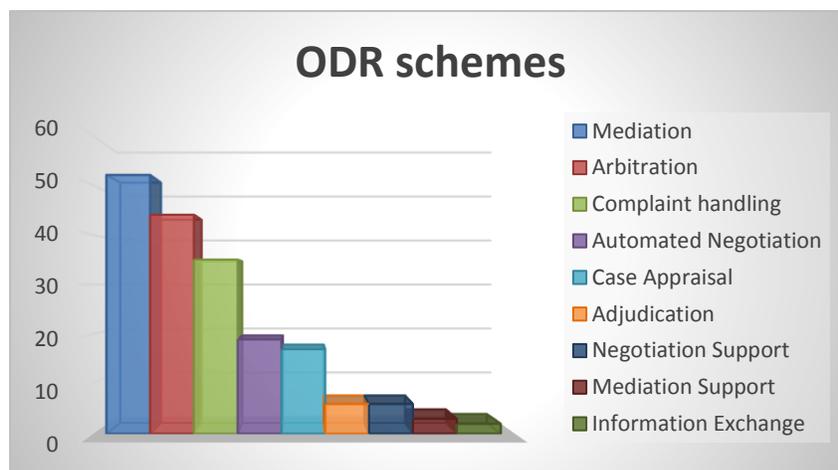


Figure 4: Statistic of most used ODR schemes from launched ODR platforms (Tylor 2004, 4).

Furthermore, after Heuvel (2000, 8) exist four types of ODR systems: **Online settlement**, using an expert system to automatically settle financial claims; **Online arbitration**, using a website to resolve disputes with the aid of qualified arbitrators; **Online resolution of consumer complaints**, using e-mail to

handle certain types of consumer complaints; **Online mediation**, using a website to resolve disputes with the aid of qualified mediators. Performing ODR as an ADR method and system together via a central ODR platform can be driven into two ODR processes (Landry and Thibault 2003):

1. **ODR system provides an integrated ADR solution to consumers and businesses conducted online.** System enables an authorized trader to link its e-commerce web-site to the dispute resolution services centralized on the ODR platform. The link is performed by a distinctive, recognizable Trust Mark displayed on the e-commerce web-site and identifying the ODR services; a consumer browsing the e-commerce web-site hyperlinks to the ODR platform by clicking on the Trust Mark. The ODR platform then provides an online framework for the parties to exchange information and proposed solutions for resolving their dispute. Qualified mediators/arbitrators are appointed to resolve disputes online which the parties are unable to settle by themselves.
2. **ODR system provides ODR services to any parties who agree to use it.** A contract clause providing for such an agreement is made available on the ODR platform for parties to insert in their contracts. The parties may agree to use one or more ODR services, including negotiation, mediation or arbitration; the mediation and arbitration is performed online by qualified mediators and arbitrators.

The main advantages of the virtual settlement for consumer disputes are **voluntariness, informality and privacy** of procedure and also the faster final decision of cross-border dispute within 90 days. The ODR procedure is extremely confidential, where information exchange enjoys strict protection of the data, although their use is transparent. *ODR advantages* can be combined with **democratic values** after good governance principles and challenges that are facing the courts.⁷ ODR Advisory group (2015, 8-9) has proposed main court challenges, which ODR can offer as democratic values in resolving small value disputes:

- **Affordable** – for all parties in the dispute (citizens, consumers, small businesses etc.), regardless of their means and different interests;
- **Accessible (online)** – especially for citizens with physical disabilities, for whom attendance in the justice institutions (e.g. court), is difficult if not possible;
- **Intelligible** – to the non-lawyer, so that citizen can feel comfortable in representing themselves and will be at no disadvantage in doing so;
- **Appropriate** – for the online generation and for an increasingly online society in which so much activity is conducted electronically;
- **Speedy** – so that the period of uncertainty of an unresolved problem is minimized;
- **Consistent** – providing some degree of predictability in its decisions;
- **Trustworthy** – a forum in whose honesty and reliability users can have confidence;
- **Focused** – so that judges are called upon to resolve disputes that genuinely require their experience and knowledge;
- **Avoidable** – with alternative services in place (ADR or ODR), so that involving a judge is a last resort;
- **Proportionate** – which means that the costs of pursuing a claim are sensible by reference to the amount at issue;

⁷ Ibid. p. 26.

- **Fairness** – affording an opportunity for citizens to present their cases to an impartial expert, delivering outcomes that parties feel are just;
- **Robust** – underpinned by clear rules of procedure and fully implementing the law of the land;
- **Final** – so that court users can get on with their lives.

ODR can provide all above listed challenges, with which are dealing all public (justice or administrative) institutions every day. Furthermore, ODR can provide intelligible and trustworthy citizen, which have affordable, proportionate and appropriate online access to justice with consistent, focused and reliable third party (judge, mediator, arbitrator etc.) that is able to bring under robust laws a speedy, focused and final decision at avoidable high costs. Democratic values are incorporated inside ODR process, which is accessible online and is successful, if the parties make an agreement to try it, while they have still possibility to settle on the court. ODR can be an efficient democratic tool, which puts the rights in hands of the citizens with full knowledge and empowerment. If the citizens would be through e-government properly informed and educated about all ways of resolving their small value e-disputes, then they would definitely try ODR. Citizen who tried ODR know his way to justice and will not give up with paying for the goods or services with which he is not satisfied. ODR educate us about importance of our rights, new ways of constructive communication and behavior, possibility of consensual dispute resolving process, which bring trust, satisfaction and new consensual connections with better interactions all over the world.

Historic and legal overview of ODR systems

Although, internet era goes back to 1969, ODR did not emerge before the early 1990s. Existence of many Internet access limitations was the main reason for ODR taking two decades to be finally realized. The wide world internet connectivity was invented not before 1989 or more precisely, not until 1992, when the National Science Foundation prohibited commercial activity on the Internet (Kesan and Shah 2001, 99). After 1994 disputes related to e-commerce began to surface. For example, the U.S. Federal Trade Commission filed its first case alleging online fraud (commercial spam). In 1996, the National Center for Automated Information Research (NCAIR) was the first who promoted and sponsored ODR on its conference, because of the growing number of online disputes arising out of online activities (Katsh 2006, 3).

Since 1996 further ODR has been developed through four different stages, from which the last is still in process:

1. **“Hobbyist phase”**: individual enthusiasts started work on ODR, often without formal background;
2. **“Experimental phase”**: foundations and international bodies funded academics and nonprofit organizations to run pilot programs;
3. **“Entrepreneurial phase”**: a number of for-profit organizations launched private ODR sites;
4. **“Institutional phase”**: piloting and adopting ODR by a range of official bodies including courts, government dispute resolution agencies (Katsh, Rifkin 2007, 47-72, Conley Taylor in Agustí et al. 2009, 87-88).

In this context, the development of ODR have been driven from *two main forces* till today. First, the difficulties of traditional methods of resolving small value e-disputes have lead us to interest in in faster, low-cost, more proportionate cross-jurisdictional dispute resolution methods. Special interest in this force have shown governments and intergovernmental organizations in promoting e-commerce

(OECD, 1999), whereas traditional courts were not a realistic option for consumers and business. Consumers' empowerment is the EU priority in cross-border transactions, while in EU exist more than 500 million consumers. Furthermore, the losses suffered by European consumers due to the problems with purchased goods or services are estimated at 0.3 % of the EU GDP.⁸ Second, the forces that promoted ADR as an alternative to courts are also driving the development of ODR.

ODR is today a political priority for the EU, which the EU institutions are promoting together with ADR systems for effective citizen and consumer protection. The beginnings of EU's special attention with the promotion and development of effective consumer protection date back to early 1975. For instance, the O(A)DR legal basis regulation in EU is provided by article 114 and 169 of the *Treaty on the Functioning of the European Union* (hereinafter – the TFEU).⁹ The TFEU gives particular importance to citizen (part II) and consumer protection (title XV) through trans-EU networks (title XVI) in terms of supporting their interests, providing high protection and promotion of their rights by awareness building, education and self-organization.

The first steps of developing ODR systems were highlighted through promoting ADR schemes as '**soft law**' in *two EC Recommendations*, which sets out main principles of *independence, transparency, adversarial principle, effectiveness, legality, liberty, representation, objectivity, efficiency and fairness* to ensure greater choice and flexibility for consumers, particularly with respect to e-commerce and the development of communication technology.¹⁰ These principles must be taken into account by the authorities in each Member State and their bodies that provide services for consumer disputes resolution. Furthermore, the EC drafted *the Green Paper on Alternative Dispute Resolution in Civil and Commercial Law* in 2002 with the aim to initiate a broad-based consultation of those interested in legal issues which arise in regard to ADR in civil and commercial law.¹¹ But, the most important soft law proposals today are *Regulation on ODR*¹² with ReNEUAL Model Rules on EU Public Administrative procedure (book IV, 2014), which we can combine together in order to increase citizen and consumer empowerment.

Parallel to the proposals as '**soft law**', EU also established formal legislation in terms of '**hard law**' – different EU directives. A series of adopted directives in the field of consumer protection is called "**Consumer acquis**", which contain provisions on O(A)DR schemes for consumer disputes, such as the *Directive on unfair consumer contracts, Directive on electronic commerce, Directive on credit agreements for consumers, Directive concerning common rules for the internal market in electricity* etc. There are

⁸ For example, [The Gallup Organization \(2011\): Flash Euro barometer No 299, "Consumer attitudes towards cross-border sales and consumer protection"](#).

⁹ TFEU, OJ L EU, No. 83/2010, 47-199. Article 114 regulates EU competences for the approximation of the laws concerning the establishment and functioning of the internal market, while article 169 lists the EU competences for promotion of the interests of consumers and ensuring a high level of consumer protection. See also Juškys and Ulbaitė 2012, 26.

¹⁰ The first Recommendation 98/257/EC of 20 March 1998, OJ L 115, 17. April 1998 was on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes, and the second the Recommendation 2001/310/EC of 19 April 2001 (2001/310/EC), OJ L 109 on the principles for out-of-court bodies involved in the consensual resolution of consumer disputes.

¹¹ The Green paper on Alternative Dispute Resolution in Civil and Commercial Law (2002), COM (196 final). The Green paper has outlined three main reasons for growing interests in ADR: 1. Increasing awareness of the ADR as a means of improving general access to justice in everyday life; 2. Considerable attention that ADR has received in a number of Member States; 3. Attribution of a political priority to ADR in the context of the information society and the promotion of ODR.

¹² 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).

also a number of EU directives as sector-specific legal regulation, which focus primarily on the critical area of universal services (telecommunication, tourism, energy, gas, postal and financial service etc.) and require the establishment of appropriate and effective ADR systems also online.¹³

The new EU legal framework on consumer protection is increasing the development of ODR, but it is questionable whether the existing broad European legislation can assure a consistent and efficient ODR providers in all Member States.¹⁴ Additionally, the EC adopted new hard law legislative framework: *Directive on ADR for consumer disputes with Regulation on ODR*, which aim is to encourage formation of high-quality bodies for resolving contractual disputes related to the sale of goods and provision of services by traders.¹⁵ This Directive also touches three main problems, which are important to build efficient ODR structure in the future.¹⁶ The regulation on ODR should enable businesses and consumers to directly access an online platform, established at an intermediary body in accordance with the Directive as assistance in resolving contractual disputes related to cross-border online transactions. The new EU policy aims that empowered consumers are the heart of the Single Market, which has support with the new EU Consumer program (2014-2020) and Management Plan (2014).¹⁷ The new program will achieve the aim with contributing to the protection of health, safety and economic interests of consumers and promoting their right to information, education and to organize themselves to protect their interests, also on Digital platform. Furthermore, the set goals of the European 2020 Strategy includes specific questions about the Digital agenda, sustainable growth, social integration and smart regulation, which calls for '*citizens to be empowered to play a full role in the single market*', which '*requires strengthening their ability and confidence to buy goods and services cross-border*'. Therefore, it

¹³ Directive 93/13 EEC of 21 April 1993 on unfair in consumer contracts, OJ L 95.

Directive 2000/31/EC on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce), OJ L 178/1.

Directive 2008/48/EC on credit agreements for consumers and repealing Council Directive 87/102/EEC, OJ L 133/66, 66.

Directive 2009/72/EC on concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC, OJ L 211/55, Directive 2009/73/EC concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC, OJ L 211/94, 55, 94.

Such as Directive 2009/136/EC amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications network and services; Directive 2002/65/EC of 9. October 2002 concerning the distance marketing of consumer financial services, article 14; Directive 2008/122/EC of 14 January 2009 on the protection of consumers in respect of certain aspect of timeshare, long-term holiday product, resale and exchange contracts (art 14(2)), OJ L 33, article 14; Directive 2008/6/EC amending Directive 97/67/EC with regard to the full accomplishment of the internal market of Community postal service, OJ L 52, article 3; Directive 2002/92/EC of 15 January 2003 on insurance mediation (Art 11(1)), OJ L 9, article 11.; Directive 2004/39/EC on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC and repealing Council Directive 93/22/EEC, OJ L 145/1, article 33 and others.

¹⁴ Most ADR schemes do not distinguish between the purchase of goods or services by distance sales (e-commerce) and the methods of direct sales (personal sales). They tend to resolve all kinds of disputes in the area of their jurisdiction, regardless of whether it is electronic or conventional purchase. See DG SANCO 2011, 10.

¹⁵ Directive No 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).

¹⁶ 1. Incomplete coverage of CADR at sectoral and geographical level, 2. Consumers' and businesses' lack of awareness about existing ADR bodies, 3. Variable quality of CADR.

¹⁷ DG-SANCO (2014): The main problems that need to be addressed are signed in following categories with specific aims for consumer policy: *Security* (enhance product safety through effective market surveillance throughout the EU), *working for and with consumers* (increasing visibility of EECs), *making markets work for consumers* (to adopt proposed measures for greater transparency and comparability of bank fees, flexibility of transfers of payment accounts), *going digital* (implementation of Digital Agenda 2014 – 'EU consumer in the digital era'), *strengthening rights and redress* (enforcement of consumer redress to consolidate consumer rights), enhancing knowledge ('know how' through the 'Consumer Scoreboard') and *ensuring better implementation and enforcement* (to unlock the full potential of the Single Market with enforcement of consumer rights by strengthening cooperation between national enforcement bodies through Consumer Protection Cooperation (CPC) network).

is important to create an efficient ODR framework within which consumers can rely on the fundamental principle that ensures safety, detects inefficiency of set quality standards, and addresses them effectively across Europe.¹⁸

Current state of ODR platform in EU

European Commission (2016) in line with new Regulation EU/524/2013 on ODR¹⁹ for consumer disputes (complemented in 2015 by Commission Implementing Regulation EU/2015/1051) and with Directive 2013/11/EU on ADR for consumer disputes, propose new EU-wide ODR platform, which seeks to help consumers resolve disputes arising in connection with their online purchases without going to court. EU ODR platform has become available on 15 February 2016, which provide an easy, fast and inexpensive way to assist in resolving disputes between online buyers and traders. EC is the current and main manager of the platform. The ODR platform is easy to use with instructions in all European languages (through 'Your Europe Portal'), which is pay-free and available to all consumers and businesses in the EU. However, the ODR procedure could potentially include a fee defined by the specific ADR entity chosen to deal with the procedure, which will apply its own procedural rules, including regarding cost.

After Regulation EU/524/2013 on ODR a '**consumer**' is a natural person acting outside their trade, business, craft or profession. However, if an online sales or services contract is concluded for purposes partly within and partly outside the person's trade, with the trade purpose limited and not predominant in the overall context of the supply, that person should also be considered as a consumer. Namely, consumer can be interpreted as citizen, user, insurer, patient etc. Meanwhile, '**trader**' means any natural persons, or any legal person irrespective of whether privately or publicly owned, who is acting, including through any person acting in his name or on his behalf, for purposes relating to his trade, business, craft or profession. **The online sales or service contract** (Article 4 (1/e) of the Regulation) is one where the trader, or the trader's intermediary, has offered goods or services through a website or by other electronic means (for instance, a mobile telephone), and the consumer has ordered those goods or services on that website or by other electronic means.

The ODR platform is a single point (as a Trust Mark) of entry for consumers and traders seeking to resolve disputes regarding contractual obligations stemming from online sales and service contracts. ODR procedure is a four-step online process:

1. **Submitting an online complaint** (consumer or trader) via an electronic complaint form in the desired language,
2. **Agreeing on the ODR body** (within 30 days, in case the parties fail to agree on which ADR entity is to deal with the complaint, it will not be taken any further and the complainant (consumer or trader) is informed of other available means of redress),
3. **Complaint handling by ODR body** (both parties acts as 'referee' in resolving their dispute),

¹⁸ See European Commission (2010, 5): *Europe 2020, a strategy for smart, sustainable and inclusive growth*, which proposes seven important initiatives: 1. an innovation Union, 2. youth on the move, 3. a digital agenda for Europe, 4. a resource-efficient Europe, 5. an industrial policy for the globalized era, 6. an agenda for new skills and jobs and 7. European platform to tackle poverty.

¹⁹ Regulation (EU) No 524/2013, applicable since 9 January 2016, provides the legal basis for the establishment of the ODR platform at EU level. The platform provides a tool for dealing with disputes initiated by consumers resident in the EU against traders established in the EU (see Article 4(2) of Directive 2013/11/EU for the definition of 'established trader'). It will transmit disputes to designated national ADR bodies that comply with the binding quality requirements established by Directive 2013/11/EU.

4. **Outcome and closure of complaint** (within 90 days, all procedures within the ODR platform are conducted online, while also ensuring the privacy of the users from the outset).

After EU Parliament (2016, 2) ODR platform is a user-friendly interactive and multilingual website, which enables consumers and traders to settle their disputes over domestic and cross-border online purchases at the click of a mouse. However, to ensure the proper functioning of the platform – each Member State had to designate one ODR contact point hosting at least two ODR advisors and to communicate the relevant details to the European Commission. Member States were able to confer responsibility for the ODR contact points to their centers belonging to the European Consumer Center (ECC) network. After Directive, EU traders established an electronic link to the ODR platform on their websites, alongside their email address, thus signaling to consumers their first point of contact. To ensure broad consumer awareness of the ODR platform Member States now need to ensure that the ECC and ADR entities also provide an electronic link to the ODR platform on their websites. Namely, through ODR platform was till today filed 25,984 complaints, from which 65.25 % are national and cross-bordering complaints. Most complaints were filed in the field of clothes and footwear (11.41 %), Airlines (8.55 %), ICT goods (8.02%) and mobile telephone service (5.27 %). Important is that ODR does not to deprive consumers or traders of their rights to seek redress before the courts. In fact, ODR should boost the enforcement of consumer rights across the EU in the context of an ever-growing e-commerce sector and offer its consumers a swift alternative to court procedures. It can also prove to be very helpful in those Member States which have a substantial backlog of cases pending before the courts (for example Croatia). Overall, the platform aims to contribute to strengthening consumer trust in online purchases, in line with the goals of the Digital Single Market strategy.

Good Practices of ODR in Public Administration

Through best-practice analysis of ADR systems across all EU, we could point out the successful structures of “administrative” ODR systems in Public Administration. For instance, **Belgium** and **Netherlands** both have a strong, stable and effective structure of the ODR system, which combines a greater number of different ADR bodies (main or sector, private or public) with different ADR schemes. In fact, all ADR bodies are interconnected under one “Mediation umbrella”, which is reaching the high level of strong mutual cooperation. This so called “umbrella” also connects all ADR bodies on-line as ODR system, which is more visible and recognizable to all consumers and businesses in the country.

1.1. Belgium

Belgium ADR dates back to 1999 as a consequence of Copernicus Reform for modernization of public administration, which main goal was restructuring federal administration for the purposes of restoring a citizens’ trust and confidence in public administration. The main premise was that public servants work for citizens rather than citizen for public administration. In this context, Federal Public Services (hereinafter: FPS) and Federal Public Planning Services (PPS) have replaced former Ministries. Main reason for adding ADR to the public administration was ethical objectives, due to the liberalization process of certain universal service sectors – mainly energy and telecommunication. This has led to a large number of consumer complaints, therefore Directorate-general Enforcement and Mediation (hereinafter: DG-EM) had authorized some corporate and consumer federal entities to resolve these complains through sectoral mediation (Voet 2013, 1). Belgium has today more than 40 public and private ADR bodies, which are connected under one umbrella through a number of FPS and PPS (Voet in Hoodges et al. 2012, 34-36).

Efficiency of the national and sectoral ADR led to a start of the ODR project. ODR was introduced through a Pilot project 2005-2011 in three phases.²⁰ Belgium ODR is called **BelMed** as Belgium Mediation, which is reachable in four languages (Netherlands, English, French and German) to all consumers and business in Belgium. ODR process is divided on two steps:

1. **General information on ADR and ODR procedure** (mainly C2B and B2C, all uncommercial disputes C2C or B2B are excluded (Voet in Hodges et al. 2012, 26-34. Voet 2013, 2);
2. **ODR platform with 9 different sectors with undersections:** 1. Consumer goods (29), 2. General consumer services (13), 3. Financial services (11), 4. Postal services and electronic communication (6), 5. Transport services (7), 6. Leisure services (9), 7. Energy and water (5), 8. Health (5), 9. Education (2).

Important is that parties, which wish to solve their dispute with BelMed, have to file an online complaint before they go to the court. Furthermore, the ODR procedure held by public ODR entity costs from 50 to 100 EUR and held by private body costs from 100 EUR up. The duration of ODR process is within one and six months. After Annual Report (DG-EM 2011, 5) BelMed held 36,791 complaints (or investigations) just in the year 2011, so today this number could be higher.

1.2. Netherlands

Netherlands is surprisingly consistent regardless of ADR proceedings in public and private sector, where it does not have a specific legal framework. The beginnings of the National Project of court connected ADR date back to 1996 with a view to establishing a structured scheme justified within the judiciary. In 2000, Netherlands policy formulated further ADR development with four long-term goals of setting ODR system.²¹ Since 2005 in the case of mass losses, the Consumer Commissions have the possibility of submitting the collective redress, which have increased the visibility of ADR procedures. O(A)DR procedures are based on well-established structure within the various institutions for consumer protection in terms of dual system of civil and administrative law (Weber and Hodges in Hodges et al., 2012, 129-149). Today citizen can try ADR with ODR process in three ways:

1. **National Ombudsman** (C2G) resolves citizen questions, complaints after unresolved filed appeal on the competent public authority (in case of dissatisfaction with the final decision, or in case of implied). Ombudsman issues legally unenforceable decisions as recommendation, but since it has high investigation authorizations, these are almost always positively accepted and implemented.
2. **Consumer Authority** (*nl. Consumentenautoriteit*) (C2B/G) resolve consumer disputes with issuing the final decision as warning, penal fine, administrative decision etc. With establishment of a Consumer protection body the Netherlands offered consumers an additional safety component to enforcement of their rights especially by public law.
3. **Foundation for Consumer complaint Boards** (*nl. Stichting Geschillencommissies voor Consumentenzaken, hereinafter: SGC*) (C2B/G and G/B2C) since 2000 works as ODR platform, which is combining more than 82 Sectoral Consumer Complaint Commissions (*nl. De Geschillencommissies*) and Business Commissions with National Consumer Association (*nl. Consumentenbond*) and Business Association into one **"Mediation umbrella"** to settle disputes between consumers and business or universal services (PSO). The SGC handles more than

²⁰ 1. Pilot study by Research center of Law and IT at University of Namur and Brussels school of Management, 2. Introducing pilot study to interested business, consumer parties – the problem was financing this project, and 3. Applying pilot project on EU funds call.

²¹ Court mediation schemes are based on the principles and rules provided by the Netherlands Mediation Institute (NMI), from which most important is voluntary participation of the parties in the disputes. More about ADR development in Netherlands you can find on <http://english.justitie.nl>.

10,000 complaints per a year on the field of consumer protection, in which compliance rate reaches 95.5% and 100 %. O(A)DR proceeding costs are estimated from 25 to 100 EUR and duration time from one week to not more than 4.4 months.

Belgium' and Netherlands' ODR systems are both highly interconnected under one ODR umbrella, which have created a strong communication link between all relevant and existing public and private ADR entities in a single state Cloud. The ODR platform in both Member states works fast, cheap, reliable with high quality, and is due to the independency and connectivity recognizable to all citizen in the country. This ODR cloud ensures all good governance principles from high transparency and accessibility to visibility and greater citizens' and businesses' confidence in the public administration and therefore in the state.

ODR as the New Educational Structure within e-Governance

ODR between public and private entities can be an added value to European good governance, whereas all parties are incorporated into the ODR platform, which offers useful, easy understandable information as a new educational structure of e-governance. Good e-governance can be reached through accomplishment of set common principles, which are the first step of the creation European Administrative Law.²² In addition to the variety of public administration structures and regulations among the Member states, the set of common principles can guide them throughout administration convergence. These common principles of public administration among EU Member States are a part of the so called "*acquis communautaire*", which is presented as the **European Administration Space** (*hereinafter: EAS*).²³ As Hofmann (2008) noted: "*The European administrative space is a three dimensional concept with complex vertical, horizontal and diagonal relations of the actors therein*". ODR together with its principles is a useful method that could bring all these three dimensions together. Therefore, EAS common principles can be combined with the 12 principles for good governance, which could be together fulfilled through ODR principles. After OECD-PUMA (1999) the **main administrative law principles** are common to Western Europe countries, which are driven into four following groups as a shorter version of the 12 principles for good governance after Council of Europe, which are together identified through ODR principles after Regulation EU/524/2013 on ODR.²⁴

- **Rule of law** principle can be achieved through *principle of fairness, expertise, independence and impartiality* (Article 1 and 6), which means that ODR platform should facilitate in the independent, imperial, transparent, effective, fast and fair out-of-court resolution of disputes between consumers and traders online. Furthermore, the virtual natural person in charge of ODR proceeding possess the necessary expertise in the field of alternative and judicial consumer dispute resolution, as well as general understanding of the law. Meanwhile, parties have the possibility of expressing their point of view, of being provided by ODR entity with the arguments, evidence, documents and facts put forward by the other party, and statement made

²² A process of community, representation and amelioration by open and transparent decision making, efficiently and effective services management and creation of a surrounding where the public authority and private parties cooperate and coordinate their actions for the purpose of institutional and economic development.

²³ EAS is the entire body of legislation of the European Community. EAS is derived from the rule of law and democracy, which must be adjusted to these new methods in administrative procedures on all levels of Public Administration. EAS is a term which is often used to describe the coordinated implementation of EU law and Europeanization of national administration law, what reflects a strong indirect link between European integration and public administration across Member states. See more in OECD-PUMA (1999, 1998).

²⁴ More about the 12 principles for good governance on local level, with tools for implementation. "Good Governance." Council of Europe. Accessed October 18, 2017 http://www.coe.int/t/dgap/localdemocracy/Strategy_Innovation/12principles_en.asp.

and opinion given by experts, and of being able to comment on them. The parties are informed and notified about the outcome of the ODR procedure as online agreement, and are given a statement of the grounds on which the outcome is based. Therefore, the important role is given to *competent authorities* (Article 15), *data confidentiality and security* (Article 13) and *resolution of the dispute* (Article 10).

- **Openness and transparency** can be reached with *establishment of ODR platform* (Article 5) as transparent and appropriate tool (Article 1 and 2), which through *network of ODR contact points* provide *easy understandable information on whole ODR process* from all publicly available and competent ADR entities (Article 7), submission of the complaint (Article 8) and access to information, including personal data, related to the dispute and stored in the database (Article 12). Furthermore, traders and all competent ADR entities shall provide on their *websites an electronic link to the ODR platform*, which shall be easy accessible for all consumers (Article 14).
- **Accountability** is displayed within the rule of law through the principle of liberty, which can be achieved with the whole process of complaint submission to ODR platform (Article 8) with its processing and transmission (Article 9). Namely, upon receipt of a fully completed complaint form, the ODR platform shall, in an easily understandable way and without delay, transmit to the respondent party, in one of the official languages of the ADR institutions chosen by that party. Principle of legality can be reached with the resolution of the dispute through ODR platform (Article 10), which for consensual final online agreement does not require the physical presence of the parties or their representatives, unless its procedural rules provide for that possibility and the parties agree. The online agreement has to be transmitted to the ODR platform with information on the whole ADR process with final result of the dispute.
- **Efficiency** in the use of public resources and **effectiveness** in accomplishing the policy goals established in legislation and in enforcing legislation (*“the three E’s method”*) shall be accomplished with efficient functioning of ODR platform (Article 1 and 6) and efficient ODR management data exchange through its network contact points and ADR websites (Article 7) with efficient database (Article 11), which assures confidentiality and security of personal data (Article 12 and 13).

Despite public administration divergence across Member states, EAS principles with principles of good governance represent the foundation for the uniform European Public Administration, which can be reflected through ODR platform and its implementation as a fourth dimension of e-governance in each Member State. ODR principles combined together with EAS principles also in practice, can be useful in evaluating administration capacity, civil servant professionalism, rationality of decision-making and maybe a first step towards common European Administrative Law.

Future Dynamics for a More Democratic e-Governance

Future proposals with one coherent ODR platform across EU with strong communication bridge between public and private interests, would lead us to new ways of achievement efficient, innovative and more democratic e-governance in EU. Important future dynamics can be structured in following groups:

- **The harmonization of the EU legal regulation on the field of citizen and consumer protection with an easy-transposable process into the national legislation.** First step towards efficient ODR platform is harmonization of EU legal regulation on the field of civil and administrative law, to fill the gap between public and private domain, which would erase divergences in definition of the parties in consumer disputes. This would lead us to easy-transpose process of EU regulation into each Member states’ legislation and establishment of ‘one e-governance cloud’ across whole Europe.

- **EU's action is the creation of a coherent ODR system as a fourth dimension of e-governance on the EU level.** The creation of one coherent and efficient ODR system in EU would build a communication bridge with a strong mutual cooperation between all public and private O(A)DR entities in the Member states. In fact, if we connect ODR system within e-governance as a Trust mark, which by a click of the mouse would raise citizens' and consumers' confidence and access to justice. Essentially, by building a strong, mutual cooperation with Communication Bridge between public and private bodies we are consequently establishing a strong education component with providing democratic values to citizens through innovated e-governance.

Conclusion

The EU needs to build an overall environment with 'smart' policies where citizens can rely on the basic premise of safety through education. This is the only way for fully empowered citizens, which helps them effectively benefit from the best offers on goods and services from public administration. In such an environment, the citizen are able to make informed decisions and they could also have the greater impact on strengthening the Single Market and stimulating growth by demanding value, quality and service. Building institutional and administrative capacity, reducing the administrative burden and improving the quality of legislation underpin structural adjustments and foster economic growth and employment. Capacity-building that creates efficient public administration can increase economic productivity, through faster online procedures, improved and more accessible services, quicker start-ups, and fewer unproductive demands on existing businesses. Well-functioning institutions are a pre-condition for the successful design and implementation of policies to promote socio-economic development and to contribute to growth and employment, in line with the Europe 2020 goals. The important democratic tools for effective protection of citizen rights is efficient harmonized ODR system, which can put empowered citizen at the heart of the Single Market.

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