

Consumer Online Dispute Resolution (ODR) – A Mechanism for Innovative E-governance in EU¹

Urša Jeretina

Dalius Immobilien GmbH, Austria

ursa@zavod-up.si

ABSTRACT

Online Dispute Resolution (ODR) could be the first important step towards adjusting the public Administration to the requirements of the digital era by introducing new e-disputes. In this context, this article examines the significance of the emergence of consumer ODR systems in EU as a new mechanism for resolving disputes, online ones included. It takes a theoretical research approach to evaluate the nature and scope of ODR development in the emerging field of e-governance and combine it with a comparative data analysis to identify the core positive and negative challenges in the use of ODR. Some EU member states have already adopted ODR as a tool for digital e-government and others are still in the period of its implementation. ODR has already proved effective resolution for at least some disputes (e.g. cross-border disputes), but unfortunately has not yet reached its full potential. The lack of relevant ODR case law is another issue that contributes to only gradual usage of ODR systems and their efficiency. Key findings are formulated as a list of challenges that EU has to face for efficient use of ODR and it as an important part within innovative European e-governance in the future.

Keywords: dispute resolution, consumer protection, online dispute resolution (ODR), e-disputes, digital era governance, innovative e-governance, EU

JEL: D18, K23

1 Introduction

New conflicts, especially e-disputes, are the consequence of nowadays interaction through information and communication technology (ICT). 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.,

¹ This article is a revised version of the paper entitled 'Consumer Online Dispute Resolution (ODR) – As a key cultural change – Mechanism for innovative Public Administration in EU', presented at the 25th NISPAcee Conference in Kazan, Republic of Tatarstan, Russia Federation, 18 May – 20 May 2017. The NISPAcee contributions are not publicly available.

2001, p. 159). Governments need to deal with the entire range of disputes in society, mostly on the area of citizen or consumer protection – whether under civil or administrative law. A wide range of goods and services are today available online, but there is no truly adequate mechanism for legal certainty. Therefore, the important role of the government is providing valuable information to citizens or consumers through e-governance with easy-use mechanisms to help resolve small value disputes, which arise from e-commerce transactions.

After EPRS (2016, pp. 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 GDP.² According to the European Commission (hereinafter: EC), in 2014, 44% of EU consumers purchased online domestically and 15% from other EU countries, furthermore, in 2015 one of 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.³ Scoreboard indicates a quarter of all consumers with problems did not complain, they believe in low chances of success or are not aware of other possible mechanisms of the complaint procedure. Meanwhile, consumers were most satisfied with alternative dispute resolution (hereinafter: ADR) complaint-handling bodies,⁴ followed by those who complained directly to the service providers.

The Online Dispute Resolution (ODR) – so called online ADR – potentially offers a useful set of tools for resolving disputes – both online and offline. EU has proposed applicable ODR platform as a tool for digital e-government especially to resolve cross-border online disputes. EU ODR platform is now in the last developing stage. Although, EU is still facing different barriers caused by translation, internal non-harmonized ADR systems and administrative dilemmas according to existing legal gaps across Member states. EU's goal has been set – till the end of 2018 every Member state is obligated to introduce ODR platform in their (digital) legal system. Therefore, this paper focus is on the development of the Consumer ODR systems in EU as an innovative reform of e-governance with the new ODR regulation in the future.

2 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).

3 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.

4 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.

2 Methods and Data

This paper is based on the use of different research methodologies, techniques and analysis. Theoretical research is mainly based on classifying, identifying and differentiating of Consumer ODR systems in EU, what gives a clear picture of non-complete ODR development. With theoretical data analysis of ODR systems across EU after different authors and comparative data analysis of main existing ODR platforms, we propose results as key findings with important issues and challenges, which EU has to face to complete ODR developing stage and ODR to become available for efficient use. Because of a lack of relevant case law on ODR procedures and its final online decisions with private security premise of the process, we could not determinate realistic use of ODR systems and its efficiency. The results of theoretical and comparative analysis of ODR systems helped us in the discussion whether EU ODR platform can be connected to e-governance or not. The discussion is based on data analysis of different common EU principles combined together in one framework and answer main research question, what can be done for a more innovative e-governance in EU.

3 Consumer ODR and E-governance in EU

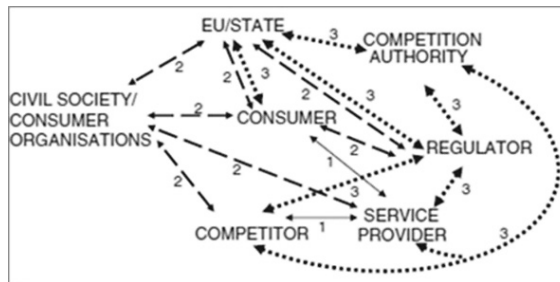
ICT and Public Administration cannot exist without each other. Governments have worldwide used ICT to create new dimensions of economic and social progress. Public administration renovated with ICT exist online as e-governance, which includes three dimensions (Okot-Uma, 2000, pp. 5-11):

- **E-democracy:** encompass all forms of e-communication between government and citizen for a more open government (interaction with a civil society) and citizen's access to information and knowledge (about the political process, services, and choice availability).⁵
- **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' and 'levels' and information sharing as a service delivery within and in-between. Normally, public service delivery touches different field of citizens' live, 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:** 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.

⁵ 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. More informed citizen has a better position to exercise its rights, play its role, carry out its responsibilities and define its relationships to others.

E-government with e-business structures various relationships for exchanging information and commodities or sale of goods and services. Most important e-commerce relationships that occur in consumer disputes 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). After Jeretina (2016, p. 196-197) 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 legal relationships (e.g. C2B or C2G, B2C or G2C, B2B or G2G, B2G or G2B). In figure 1 is shown the complexity of legal relationships that occur within e-commerce transactions. For example consumer or citizen is namely an everyday user of public services (PSO or USO – service provider or its competitor), which are on the domestic level regulated by Regulators (consumer organizations/agencies/competition authority/government), and on the international level by EU or Member state. If the regulation is not complementary between domestic and international level and also inter-domestic level its' own, then this can cause legal gaps in the use of legal provisions and drawing the line between public and private domain. The aim of administrative proceedings is an overall balance of public and private interests; more specifically, protecting the rights as a uniform, legitimate, and effective dispute resolution between public authorities (G) and private parties (C or B).

Figure 1: Complex e-commerce relationships between different actors in EU



Source: Szyszczak and Davies, 2011, p. 174.

Despite divergences in complexed e-commerce relationships, governments could provide relevant online information, mostly as 'know how' methods to resolve e-disputes. The ODR may be used in various legal relations between public and private actors (C2B, B2C, B2B, B2G, G2B or G2G). Often public providers are considered to be carried out under the public administrative law. Therefore, legal relationships between the parties in e-commerce can be interpreted by various legal regulations – under civil or administrative law. ODR mechanisms can be the perfect option for efficient consumer protection in

administrative proceedings. ODR as a fourth dimension within e-governance can bring new behavior and online interactions, which introduce us to various challenges dealing with new online conflict resolution management.

3.1 Consumer ODR as a new mechanism for resolving e-disputes

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. It is a fast and efficient tool with the presence of a third virtual-neutral party (mediator 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). "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 "fourth party" with the role of technology, which frames the parties' communication and provides the value traditionally provided by a mediator (Katsh and Rifkin, 2001). The "fourth party" is metaphorical like a mediator that can play different roles with a different impact in different contexts. In the ODR process, the "fourth party" can provide 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 agreement. After Katsh (2006, p. 5) in other words, 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.

After Heuvel (2000, p. 8) exist four types of ODR systems: 1. Online settlement, using an expert system to automatically settle financial claims; 2. Online arbitration, using a website to resolve disputes with the aid of qualified arbitrators; 3. Online resolution of consumer complaints, using e-mail to handle certain types of consumer complaints; 4. 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,⁶ after ODR platform provides an online framework for the parties to exchange information and proposed solutions for resolving their dispute. Qualified mediators are appointed to resolve e-disputes, which the parties are unable to settle by themselves.

⁶ The consumer browsing the e-commerce web-site hyperlinks to the ODR platform by clicking on the Trust Mark.

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 are performed online by qualified third neutral parties.

Before main ODR systems have rely on fixed communication technologies (static computers), while today can be provided also with mobile technologies, tablets and other flexible technologies. After Conley Taylor (in Agustí et al., 2009, p. 90) till 2006 existed more than 146 different ODR sites that were launched with examples in each continent (including Africa, Peru and Philippines). Many of them have since then closed down or appear to be dormant or without significant activity. Most of this sites were launched in Amerika (50 %) and Europe (33 %), but are also growing in Asia Pacific (14 %). Furthermore, it is hard to make a fair comprehensive judgement, whereas the ODR statistic cases can be sometimes difficult to accomplish. Namely, there exist a lack of information for more than 70% of this sites and some also do not include information on their results, because of confidentiality requirements. However, the most known ODR sites that handle the high number of cases are: SquareTrade⁷ (over 1.5 million), Cybersettle⁸ (over 100,000), eBay⁹ (through SquareTrade over 60 million received complaints as reviews), iCourthouse (over 11,000 cases filed), clickNsettle¹⁰ (over 10,000 cases per a year), iLEV-EL, Smartsettle,¹¹ WebTrader (over 2,000 cases each), Youstice,¹² Amazon,¹³

7 SquareTrade offers a password protected "Case Page" on which parties may utilize to communicate directly, without the aid of a mediator or other SquareTrade personnel. If the parties are unable to settle the dispute, information about the case can be submitted to a mediator. According to SquareTrade, self-service tools achieve over 80% successful resolutions. See more in Abernethy, S. (2000): *Trusted Access to the Global Digital Economy/Square Trade International ODR Case Study*, UNECE Forum on Online Dispute Resolution, Palais des Nations, and on <https://www.squaretrade.com/>.

8 See more on <http://www.cybersettle.com/>.

9 It is an online store that have a bad review handling case as a bad product commercial (first ODR step process) and after (as second) complaints handling through a Trust Mark: SquareTrade. More on <http://www.ebay.com/>.

10 ClicknSettle is a wholly owned subsidiary of NAM (National Arbitration and Mediation), a national provider of arbitration and mediation services and electronic case management software. The company maintains Hearing Officer Rosters and conference facilities nationwide. Over 10,000 cases are handled annually involving every area of law: Personal Injury, Contracts, Construction issues, Medical Malpractice, Commercial/ General Liability, Employment Practices, Environmental conflicts, amongst others. See more on <http://www.namadr.com/>.

11 Smartsettle is applicable to virtually any situation where there are multiple decision makers with conflicting objectives. Smartsettle's primary function is to support decision makers, whether individually, in groups or on opposing teams. Smartsettle's products are designed to be able to help with any conflict, no matter how big or small. Smartsettle can be used in different ways with different schemes: Two-party or single-issue case, negotiation, mediation, facilitation and arbitration. More on <https://www.smartsettle.com/>.

12 Youstice is web application that helps resolve customer complaints and make shopping trouble-free. With Youstice, companies can seamlessly communicate and handle customer complaints. Similarly, disgruntled customers can get prompt assistance with their issues and save valuable time. Companies and customers are able to communicate, negotiate directly, and resolve issues. More on <https://www.youstice.com/en/>.

13 Online store that resolve all complaints through a Trust Mark: SquareTrade. More on <https://www.amazon.com/>.

TRUSTe¹⁴ (1000 of complaints), and others. 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. The most used ODR schemes till 2004 are mediation, arbitration, negotiation and complaint handling. Along these ODR schemes are today's most popular also single-case and two-party handling, reviews handling, conciliation and facilitation.

The ODR procedure is confidential and information exchange enjoys strict data protection under policy of privacy. Main advantages of ODR process are not just voluntariness, informality, security and privacy of the procedure, but also fast final decision, which must be reached within 90 days. The ODR Advisory Group (2015, pp. 8-9) has proposed main court challenges, which ODR can provide in resolving e-disputes.¹⁵ ODR can provide intelligible and trustworthy citizen, who have affordable, proportionate and appropriate online access to justice with consistent, focused and reliable third party that is able to bring under robust laws a speedy, focused and final decision at avoidable high costs.

3.2 Historic and legal overview of consumer ODR

Existence of many Internet access limitations was the main reason for ODR taking two decades to be finally realized. 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, p. 3). Since 1996, ODR has been developed through four different stages, from which the last is still as ongoing process (Katsh and Rifkin, 2007, pp. 47-72, Conley Taylor in Agustí et al., 2009, pp. 87-88, Cortés, 2010a, pp. 55-56):

1. **"Hobbyist phase"** (from the creation of the internet till 1995, when ODR has not exist): The first disputes arose from the internet and informal ODR mechanisms were used. Ideas started appearing in the different methods as to how these disputes could be solved in an effective manner. Individual enthusiasts started work on ODR, often without formal background.
2. **"Experimental phase"** (from 1995 to 1998): More disputes started to appear and the first ODR initiatives were used by foundations and internatio-

¹⁴ TRUSTe privacy programs hold companies to high standards – helping them protect the privacy of parties' personal information. Company's back this up by offering TRUSTe powered ODR, which lets users report potential violations of posted privacy statements and specific privacy issues that pertain to TRUSTe clients. TRUSTe investigates all eligible complaints and mediates solutions between users and clients. More on <https://www.truste.com/>.

¹⁵ *Affordable* – for all parties in the dispute; *Online Accessible* – for citizens with physical disabilities; *Intelligible* – self-representation; *Appropriate* – for an increasingly online society; *Speedy*, *Consistent* – providing some degree of predictability in its decisions; *Trustworthy* – users can have confidence; *Focused*; *Avoidable* – involving a judge is a last resort; *Proportionate* – lower costs; *Fairness* – citizens can present their cases to an impartial expert; *Robust* – clear rules of procedure; *Final* – court users can get on with their lives.

nal bodies funded academics and nonprofit organizations to run pilot programs.

3. **“Entrepreneurial phase”** (from 1998 to 2002): The ODR industry started to emerge and commercial enterprises as a for-profit organizations launched private ODR sites and had successful initiatives (e.g. SquareTrade and CyberSettle).
4. **“Institutional phase”** (from 2002 and continues to the present): It refers to the adoption of ODR programmes by public bodies, including courts, government dispute resolution agencies.

In this context, the development of ODR have been driven from two main forces:

1. The difficulties in traditional methods for resolving e-disputes have led to interest 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 disputants.
2. 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. The beginnings of EU’s special attention with the promotion and development of effective consumer protection date back to early 1975. For instance, the EU legal basis regulation for ADR are provided by article 114 and 169 of the Treaty on the Functioning of the European Union (hereinafter – the TFEU).¹⁶ Although, the TFEU indirectly promotes also ODR, while giving 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,¹⁷ to ensure greater choice and flexibility for consumers, particularly with respect to e-commerce and the development of communication technology. Furthermore, the EC drafted the Green Paper on ADR in Civil and Commercial Law¹⁸ in 2002 with the aim to initiate a broad-based consultation of those interested in legal issues. The most

¹⁶ TFEU, OJ L EU, No. 83/2010, pp. 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.

¹⁷ 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. Main principles are: principle of independence, transparency, adversarial principle, effectiveness, legality, liberty, representation, objectivity, efficiency and fairness.

¹⁸ The Green paper on Alternative Dispute Resolution in Civil and Commercial Law (2002), COM (196 final).

important soft law proposals today are Regulation on ODR¹⁹ and ReNEUAL Model Rules on EU Public Administrative procedure (book IV, 2014), which we can combine together in order to increase consumers' empowerment in administrative appeal. After Dragos and Marrani (in ReNEUAL, 2014, p. 540) administrative appeal may be in a broader sense included in category of ADR tools, what has been strongly recommended by Council of Europe and has found its way into most of the jurisdictions, as well as in the EU law. Special rules on the field of administrative contract law are considered in ReNEUAL Model Rules,²⁰ because there is no consensus on the "public contract" definition. The ReNEUAL has proposed that a public contract can be divided into three phases,²¹ which are usually common to all legal systems.

Parallel to the proposals as 'soft law', EU also established formal legislation in the terms of 'hard law' – different EU directives, so called "Consumer acquis"²² – Directive on electronic commerce was the first step to create ODR platforms. Furthermore, a number of EU directives as sector-specific legal regulation²³ focus primarily on the critical area of universal services (telecommunication, tourism, energy etc.), which require the establishment of appropriate and effective ODR systems. The new EU legal framework on consumer protection is increasing the development of ODR, but it is questionable whether the existing EU legislation can assure a consistent ODR platform in all Member States. The EC adopted new hard law legislative framework: Directive on ADR for consumer disputes²⁴ with Regulation on ODR, which aim is to encour-

19 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).

20 ReNEUAL Model Rules on EU Administrative Procedure, Book IV- Contracts, Hofmann Herwig C.H., Schneider Jens-Peter, Ziller Jacques (eds), 2014, Version for on line publication.

21 1. *Administrative procedure leading to the conclusion of a public contract* – governed by administrative procedure and public procurement rules (G2G or G2B/B2G); 2. *Conclusion of the contract* – governed by the rules establishing the prerequisites for the validity of a contract in the right to invoke invalidity (G2B/B2G or G2C/B2C or C2B/C2G); 3. *Execution and end (expiration) of the contract* – above all governed by the law of obligations (G2G or G2B/B2G; B/G2C or C2B/G).

22 Such as Directive 93/13 EEC of 21 April 1993 on unfair in consumer contracts, OJ L 95; 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, p. 55, 94; 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.

23 A series of adopted directives in the field of consumer protection. 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.

24 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

age formation of high-quality bodies for resolving contractual disputes. The Directive also touches three main problems,²⁵ which are important to build efficient ODR structure in the future. The new EU policy aims that empowered consumers are the heart of the Single Market supported with the new EU Consumer program (2014-2020).²⁶

3.3 Current state of the ODR platform in EU

The development of extra-judicial dispute resolution has been European concern for the last ten years. The promotion of ODR is simply the next step of a well-established policy.²⁷ In addition to promote ODR through different regulation, the EU has been active on several fronts to boost its development, essentially on the field of e-commerce. The first ODR initiative that has been financially supported by the EU was the ODR provider called ECODIR.org²⁸ - Trustmark research project for commercial sites, offering different ODR schemes (such as negotiation, mediation and recommendation) until June 2003 (Kaufmann-Kohler and Schultz, 2004, pp. 86-87). In order to improve the functionality of the common EU market with the power to increase ODR practice, in EU exist three networks: FIN-NET (Network of ADR entities for financial services),²⁹ the ECC-NET (European Consumer Centers),³⁰ and SOLVIT ('online problem solving network').³¹ Although all three networks have not yet reached the desired levels, were actually the first step towards establishing a common ODR platform in EU.

2006/2004 and Directive 2009/22/EC (Directive on consumer ADR).

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

26 European Commission (2014): Consumer program 2014-2020, see more on http://ec.europa.eu/consumers/strategy-programme/financial-programme/index_en.htm.

27 The political priority was specifically asserted in the context of the information society, where the role of new ODR has been recognised as a form of web-based cross-border dispute resolution'). See more in Green Paper (2002), n. 22, p. 1.

28 ODR provider supported by the EC, used a three-step process of negotiation, mediation and recommendation. Ecodir.org used an online facility that allows online registration and, subsequently, negotiations using e-mail, and only after negotiations fail will mediation be utilized. ECODIR project was a pilot project that provided online consumer conflict resolution services until the end June 2003.

29 Financial Services Complaints Network, established for the development of special ADR bodies on the basis of the document – Commission 98/257/EC on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes, OJ L 115/31. FIN-NET is network of national ADR, which deals with cross-border disputes between consumers and financial service. FIN-NET has 50 members from which there are 19 EU Member states and Ireland, Liechtenstein in Norway. This means that Bulgaria, Cyprus, Estonia, Hungary, Lithuania, Romania, Slovakia, Slovenia and Croatia are still not members of FIN-NET.

30 European Consumer Centers Network, established as Extra-Judicial Network (EEJ-NET) with the EC Resolution 2000/C on a Community-wide network of national bodies for extra-judicial settlement of consumer disputes, OJ C 155/1. ECC-NET is European network particularly for consumer protection which directs consumer to an adequate ADR body. The Annual reports (2005-2009) confirm, that in the last two years number of ADR cases increased from 410,000 in 2006 to 530,000 in 2008 (DG SANCO, 2009, p. 13).

31 SOLVIT – online network for out-of-court settlement in legislation misapplication by public authorities on the Single market. More on SOLVIT on <http://ec.europa.eu/SOLVIT/>.

EC (2016) in line with new Regulation EU/524/2013 on consumer ODR³² and with Directive 2013/11/EU on consumer ADR, 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 platform³³ has become available on 15 February 2016, which provide an easy, fast and inexpensive way to assist in resolving e-disputes between consumers and traders.³⁴ 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 ODR body chosen to deal with the process, which will apply its own procedural rules, including regarding the costs.

The ODR platform is a single point (as a Trust Mark) of entry for consumers and traders seeking to resolve e-disputes regarding contractual obligations stemming from online sales and service contracts.³⁵ ODR procedure is four-step online process:

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

32 Regulation (EU) No 524/2013 (complemented in 2015 by Commission Implementing Regulation EU/2015/1051), 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.

33 Available on <http://ec.europa.eu/consumers/odr/>.

34 A 'consumer' is a natural person acting outside their trade, business, craft or profession. 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. '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. See Regulation EU/524/2013 on ODR.

35 The online sales or service contract (Article 4 (1/e) of the Regulation EU/524/2013 on ODR) 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.

of a mouse. 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 EC. Member states were able to confer responsibility for the ODR contact points to their centers belonging to the ECC-net. After Directive on ADR, 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 a higher consumer awareness about ODR process, Member States need to ensure bigger promotion on existence of the ECC-net and ADR bodies connected to the ODR platform. On the ODR platform there is applied exact 365 ADR bodies cross EU, except bodies from Romania and Spain, which are currently not available.

Additionally, through ODR platform was till 30.09.2018 filed 84,745 complaints, from which 58.91 % are national and 41.09 % cross-bordering complaints. Most complaints were filed in the field of airlines service (12.87%), clothing and footwear (10.98 %), ICT goods (6.97 %), electronic goods (4.88 %) and others. Important is that ODR does not deprive consumers or traders of their rights to seek redress before the courts. In fact, ODR boost the enforcement of consumer rights across the EU in the context of an ever-growing e-commerce sector and offer 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.

4 Results: Key Findings in the Use of Consumer ODR Systems in EU

EUs' goal is to develop an efficient ODR platform. ADR structure across EU is set with clear legal regulation. Member states have to complete the ODR implementation till the end of 2018 and recognize its potential. Namely, every Member state has to deal with key issues regarding the use of ODR systems that may remain as a progress or problems in its development process. Some of these advantages and disadvantages are highlighted in the table 1.

Table 1: Key issues in the use of ODR systems

PROGRESS (advantages)	PROBLEMS (disadvantages)
<i>Time savings</i>	<i>Lack of personal contact (face-to-face)</i>
<ul style="list-style-type: none"> – Speeding the process - flexibility using ODR communication. – ODR work at any convenient time (24/7) 	<ul style="list-style-type: none"> – Facilitate misrepresentation of identity and miscommunication. – Videoconferencing or other online technologies. – The interpretation of written communications may require different trainings. – The internet enables parties to self-represent, thus removing prejudices.
<i>Convenience of the procedure</i>	<i>Technologies problems</i>
<ul style="list-style-type: none"> – ODR communications allows the parties to be prepared to produce their best response without being easily intimidated or bullied. – Parties can think more thoroughly than in verbal exchanges before sending their messages. – ODR facilitates the parties to start working on their disputes immediately and allows neutral third parties to continue assisting the parties after key communications. 	<ul style="list-style-type: none"> – Parties may have different levels of knowledge and skills. – No equal technical standards, i.e. technology advances differ in every country. – In EU many people still use dial-up as well as broadband connections.
<i>Cost savings</i>	<i>Language barriers</i>
<ul style="list-style-type: none"> – Lower cost without travel and accommodation expenses. – ODR facilitates self-representation and fast settlements resulting. – ODR appropriate for small value disputes. 	<ul style="list-style-type: none"> – Existing ODR services use mainly English or German – difficulty in expressing accurate information. – Barrier not just for those parties who do not speak the language but also for those parties who use it as a second or third language. – ODR translation programs are not efficient.

PROGRESS (advantages)	PROBLEMS (disadvantages)
<i>Litigation</i>	<i>Need for party consent</i>
<ul style="list-style-type: none"> – Greater control over the processes and decisions. – The parties create their own agreement without the third party. – Parties need not legal representatives – the third parties are experts on the particular dispute area, who can remove the need for lawyers and expert witnesses. – Rules of evidence do not apply in consensual ODR. 	<ul style="list-style-type: none"> – Litigation = adversarial procedure familiar to those who use it regularly. – For those who refuse to participate in court proceedings, the latter may summon them with subpoenas and fines.
<i>Control over outcomes</i>	<i>Loss of public access and pressure</i>
<ul style="list-style-type: none"> – More control over the outcomes, increasing conflict resolution options and encouraging enforcement. – Reaching agreements without the limitations imposed by the law. 	<ul style="list-style-type: none"> – ODR generally applies confidential procedures which may cover up important information about defective products, poor customer service, discriminatory practices and other unethical business conduct that, if publicly known, would impact on consumer purchasing choices. – ODR can be used as an effective mechanism to obtain fast and fair redress for consumers.
<i>Appropriateness</i>	<i>Legal difficulties</i>
<ul style="list-style-type: none"> – ODR is the most appropriate tool to address online disputes. 	<ul style="list-style-type: none"> – No clear legal standards for ODR creates many difficulties from arisen of public enforcement to legal gaps across EU regulation.

Source: Cortés, 2010a, pp. 55–59 and author's own.

Most of listed issues can be overcome through appropriate practice, technologies and law. As we can see theoretically ODR is the most sufficient mechanism for resolving online disputes. Its advantages are confirming that ODR is the best tool for resolving e-disputes in e-commerce relationships. Parties can self-represent in a private and secured online complaint process through the Trust mark of a fourth party – technology with the help of a well-trained neutral third party and within 90 days reach consensual online agreement. Despite all positive features, disadvantages are showing clear picture what is

missing out in the ODR process – face to face communication, language barriers, authority control over its outcomes, enforceability of final decisions etc. Unfortunately, there is existing a lack of ODR case law, because of its security and privacy provisions, so we cannot determine whether final decisions are binding or not. Although, good ODR practices (e.g. ODR in Belgium and Netherlands) are confirming its good potential to be used in all e-commerce cases also in cases of administrative matters. Namely, ODR development is not yet fully complete. Listed key issues were helpful to specify main challenges how to develop one coherent ODR system in EU. These challenges are after different authors listed in table 2 below.

Table 2: Main challenges of the development of one coherent ODR system in EU

FUNDING	
<i>Public</i>	<i>Private</i>
<ul style="list-style-type: none"> – Most ODR project (B2C) have obtained funding from public bodies (e.g. ECO-DIR) or, court connected services with a standard court process. – Public funding mechanisms: grant funding (e.g. the Online Ombudsman Office), government funding (e.g. EU ODR platform), membership fees (Youstice), advertising revenue, Subsidy from other services. 	<ul style="list-style-type: none"> – Private funding mechanisms as user fees of ODR providers in many forms: a filing fee, an hourly rate for third parties, an administration fee or online “room” rental, a standard service fee - a set number of hours, a percentage of settlement, a per round bidding fee.
AWARNESS	
<i>Transparency and informing parties</i>	<i>Trust</i>
<ul style="list-style-type: none"> – Participation may depend on the chosen ODR process (arbitration, mediator, negotiation etc.). – Appropriately advertised ODR. – Intermediaries – lawyers, consumer organizations and chambers of commerce, may influence the type of remedies available to the parties. – In order to obtain the parties’ confidence in ODR it is necessary to attain the right balance between transparency and confidentiality. 	<ul style="list-style-type: none"> – Costs, including fees and possible extra costs when decisions need to be enforced. – Rules that serve as the basis for the body’s decisions. – Security measures to keep private data confidential and enforceability of decisions. – An annual report evaluating the functioning of the provider and effective feedback system.

FAIRNESS and DUE PROCESS	
<p style="text-align: center;"><i>Impartiality</i></p> <ul style="list-style-type: none"> – Third parties must be aware of the jurisdiction and the disputants’ cultural background, who may perceive impartiality in different manners. – Rule observes that computers are less concerned with perceptions of bias, e.g. ODR providers, such as Square Trade, automatically display a list of common resolutions depending on the type of dispute. 	<p style="text-align: center;"><i>Selection of neutral third parties and Legal representation</i></p> <ul style="list-style-type: none"> – Necessary training to obtain the appropriate skills for assisting in ODR. – Training for third parties how to use an ODR platform (answer technical questions, and send efficient and frequent communications). – ODR must allow legal representation when it is needed - disclosed to the other parties.
ACCESS	
<p style="text-align: center;"><i>Accessibility with Hardware and software support</i></p> <ul style="list-style-type: none"> – Accessibility of the sites to people with disabilities and slow connection speeds – giving the option of a non-Flash version. – Access to a computer with minimum hardware and software support. 	<p style="text-align: center;"><i>Language of services – choice offered</i></p> <ul style="list-style-type: none"> – English remains the most common languages for ODR services, followed by Spanish, French and German. – EU ODR platform is offered in all 31 languages. – A single language service is still the most common model (74%), increasing number of bilingual (15%) or multilingual services (11%).
PRIVACY, DATA SECURITY and CONFIDENTIALITY	
<p style="text-align: center;"><i>The role of technology as a 4th party</i></p> <ul style="list-style-type: none"> – Organize information, send automatic responses, shape writing communications in a more polite and constructive manner - blocking foul language. Monitors performance, schedule meetings, clarify interests and priorities etc. – The first challenge confronting ODR platform is choosing among the different types of online communications. <p style="text-align: center;"><i>Privacy and Security issues</i></p> <ul style="list-style-type: none"> – ODR websites are at risk of virus infections, intrusions or computer or networking crashes. Firewalls, back-up policies and antivirus systems are needed standard mechanisms. 	<p style="text-align: center;"><i>Data Security and Confidentiality</i></p> <ul style="list-style-type: none"> – Protection of the data and guarantee for confidentiality work through encryption - asymmetric crypto system: this system uses two different keys (a public and a private key) for encryption and decryption of data. This means that without the right key no one can read the messages. – Minimum security standards: identification of each message, evidence for completely sent documents, integrity of submitted information, protected information stored on a database from unauthorized parties, distinguish an original form a copy.

POLICIES and PROCEDURES	
<p><i>The shadow of the law – compliance</i></p> <ul style="list-style-type: none"> – Regulation on ODR with Directive on ADR. – Rules of the Member states' Bar Association. – UNICITRAL arbitration rules – EUs' Code of Ethics for Mediators – Model Standards of Conduct for Mediators – Various provisions within ADR/ODR general and sectoral regulation in Member states etc. 	<p><i>Self-regulation</i></p> <ul style="list-style-type: none"> – Article 16 of the E-commerce directive urges Member States and the Commission to encourage self-regulation³⁶.
IDENTITY and ONLINE SIGNATURE	
<p><i>Identity</i></p> <ul style="list-style-type: none"> – Digital signature and digital records have the same legal validity as written documents - easier to check someone's digital identity. The identity of the person you are dealing with is not always clear. 	<p><i>Online Signature</i></p> <ul style="list-style-type: none"> – A digital signature is an authentication method that uses public-key cryptography and plays an important part in ensuring the authenticity, integrity and non-repudiation of data communication.
ENFORCEMENT	
<p><i>Public entities' enforcement</i></p> <ul style="list-style-type: none"> – Governments must ensure that ODR providers comply with minimum standards of due process - they perform public functions, which may ultimately require courts to enforce the outcome. – There is no clear case law of directly enforceable online agreements on the court. The first ODR enforceable decisions will come from public institutions, such as the Spanish Online Consumer Arbitration Boards. 	<p><i>Self-enforcement mechanisms</i></p> <ul style="list-style-type: none"> – Some ODR services have designed efficient self-enforcement mechanisms. If a legal proceeding is initiated, then enforcement will not take place until the judicial proceeding concludes. – Court actions are extremely rare: 1. the high cost of litigation; 2. the fact that cyber squatters may consider their chances for redress very low or; 3. the 10 day period to bring a court action may be too restrictive.

Source: Heuvel, 2000, pp. 13–22, Conley-Taylor, 2004, pp. 9–12, Cortés, 2010, pp. 6–10, Cortés, 2010a, pp. 75–85, and author's own.

Answering questions regarding ODR funding (public or private), access (ICT support, all languages offered), awareness (transparency, openness), priva-

³⁶ The Electronic Commerce Platform Nederland (ECP.NL), an association between the business community and the Dutch Ministry of Economic Affairs, has drawn up a model 'Code of Conduct for Electronic Commerce'.

cy and security standards (public and private description keys), policies and provisions (self-regulation, regulation compliance), identity (online profile, online signature) and enforcement (public or private, binding or non-binding online agreement), would lead us one step closer to a more coherent ODR system. EU need to fulfill all main points to develop efficient use of the ODR platform. First EU has to ensure proper ODR funding and harmonized regulation strategies, which depend from each Member states' economic and legal framework. Then with good translation, identification program and public or self-enforcement mechanism provide efficient ODR structure, which is available to all ODR users on the Single market. Best solution for EU legal harmonization would be, if ODR platform would be incorporated through one Trust mark within e-governance. If this is theoretically possible to achieve, we discussed in the next section.

5 Discussion: Consumer ODR Within E-governance in EU

Implementing ODR inside e-governance can be risky, difficult and requires change. As OECD (2003, p. 6) stated: "Current practices tend to resist pressures for change, leading to wasted opportunities and unnecessary expenditure...When ICT projects go wrong, cost overruns and service delivery failures can be highly visible." Namely, online services raise issues and bring new challenges in order to pursue changing customers' expectations, privacy concerns and fulfilling public-private interest. In addition to the variety of public administration structures and regulations among Member states, common principles of e-governance can guide them throughout administration convergence. OECD (2003, p. 3) has proposed guiding principles for successful e-governance in EU. These principles can be combined with common principles of European Administration Space (hereinafter: EAS) and realized through ODR principles after Regulation EU/524/2013 on ODR.

1. **Vision or political will:** leadership and commitment are crucial to managing change. Committed leaders are required to deal with disruptive change to establish visions and plans for the future. ODR needs to be integrated within e-governance into broader policy and service delivery goals, public management reform process and activity of information society. Integration can be achieved through Rule of the Law with ODR principle of fairness, expertise, independence and impartiality (Article 1 and 6). ODR system should facilitate as an independent, impartial, transparent, effective, fast and fair online resolution process, where parties have the possibility freely comment on written online arguments, evidence, documents and facts. Furthermore, parties can reach a consensual online agreement with the help of third and fourth party, 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).

2. **Consumer/customer focus:** governments should pursue policies to improve access to online services in the way that customers should have a choice in the interaction method with government and resolving their disputes (principle of “no wrong door”). E-government services could be high qualified and engage citizens in the policy process (feedback mechanisms, information quality policies, strengthen citizen participation). Open and transparent government can be reached with establishment of a transparent and appropriate ODR platform (Article 1, 2, 5) within e-governance. The network of ODR contact points provide easy understandable information on whole ODR process (Article 7), submission of the complaint (Article 8), access to the personal database related to the dispute (Article 12). 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).
3. **Responsibility:** E-government can open policy process and enhance accountability, which could ensure clear responsibility for shared projects and initiatives. Accountability is displayed within the rule of law through the principle of liberty, which can be achieved with the whole ODR process (Article 8) with its processing and transmission (Article 9). Namely, upon receipt of a completed complaint, the ODR platform shall, in an easily understandable way, 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 final online signed agreement (Article 10), which does not require the physical presence of the parties or their representatives.
4. **Common frameworks and cooperation:** e-governance is most effective when Member states’ public officials, agencies etc. work together in customer-focused groupings across EU. Government/agency managers need to be able to operate within common frameworks to ensure interoperability, maximize implementation efficiency and avoid duplication. ODR infrastructure needs to be developed to provide a framework for individual initiatives, which encourage collaboration. ICT spending, where appropriate, needs to be treated as an investment, with consideration of projected streams of returns. A central funding program could help foster ODR and support key innovation projects. It can accomplish established policy goals in legislation and in its enforcement, which shall be the start of efficient functioning of ODR platform (Article 1 and 6) with effective ODR management data exchange (Article 7, 11).

Realization of above listed guiding principles represent a start of uniform European Public Administration. This combination approach confirms that theoretically is possible to combine ODR platform as a fourth dimension with e-governance. ODR systems in some Member states (e.g. Belgium, Netherlands, UK) are connected with all public and private authorities as one ADR or Mediation umbrella, which work fast, cheap, reliable with high quality, and

is due to the independency and connectivity recognizable to all citizen in the country (Hodges et al., 2012). Good ODR practices are the evidence for building a new dimension of e-governance in the sense of full administrative capacity, decision-making rationality, citizen and civil servant empowerment.

6 Conclusion

A wide range of products and services are available to consumers and companies online, but there is no truly adequate legal certainty. ODR can increase access to justice and ensure greater legal certainty by reducing the costs and time required by reaching a consensual e-settlement. The EU need to build an overall environment with 'smart' policies where citizens can rely on the basic premise of safety. This is the only way for full citizens' empowerment, which helps them effectively benefit from the best online offers on goods and services. In such an environment, citizens are able to self-represent, be more confident and 'know how' to act in resolving e-disputes process. Building institutional and administrative capacity across EU is improving the quality of legislation and foster economic growth with employment. ODR within efficient e-governance under one European public administration umbrella can increase economic productivity through speedy online decision process, improved and more accessible services. Legal certainty in consumer disputes within EU ODR platform is a pre-condition for the successful design of common framework to promote more friendly mechanism for resolving e-disputes. Facing main challenges and key issues is the first step towards efficient ODR platform with harmonized EU legal regulation on the field of civil and administrative law, 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 to develop a coherent ODR platform within e-governance. In fact, if we connect ODR system to e-governance as a Trust mark, which is available to all citizens and they can easily use it, would higher consumers' awareness. Essentially, by building a transparent ODR system, we are consequently establishing democratic uniform European Public Administration platform, where all citizens educate themselves about their new ways of access to justice. Innovation agenda that recognizes the complexity of these various choices in one framework offers better prospects for understanding the consequences with learning and for integrating new tools more usefully into the broad performance of e-governance across EU.

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