



European Consumer Centres France and Germany
German Contact Point for Electronic Commerce

Electronic Commerce and Alternative Dispute Resolution

**Report on the international conference, 13th June 2005 in Kehl
organised by
the European Consumer Centres France and Germany/Kehl and
the German Contact Point for Electronic Commerce**

With the aim to give the occasion for different actors in the fields of electronic commerce and alternative dispute resolution to exchange their point of views the German Contact Point for Electronic Commerce, jointly with the German Contact Point for Alternative Dispute Resolution (ADR), had organised a preparatory meeting in June 2004 for an international conference on this topic in 2005. It had brought together the Internet Ombudsmen from Germany and Austria, the Austrian Contact Point for electronic commerce and the legal experts from Euro-Info-Consumers (representing all services of the association).

Following this preparatory meeting Euro-Info-Consumers organised an international conference on 13th June 2005 on ADR in the field of electronic commerce which brought together representatives from the European Commission, French and German ministries, professionals and online ombudsmen as well as consumer associations.

The objective of this conference was to present a platform for exchanging experiences and know-how of different actors in order to discuss possible solutions and alternative ways of dispute resolution that will meet the specific requirements of the velocity and internationalisation of electronic commerce. The common denominator of the different actors participating at the conference was their willingness to cooperation on the long term with the aim to inform and protect efficiently the European consumer.

Problems in cross-border electronic commerce

As Ms. Struncova from the European Commission, Directorate-General Internal Market, has outlined, the ADR procedures in the field of electronic commerce, and here especially cross-border disputes, have to be more efficient than the traditional judicial proceedings in order to strengthen the consumers' confidence into the European Internal Market. The internet becomes more and more short-living, online shops open and close again within short time limits. A settlement of online disputes within the shortest possible time limit is therefore absolutely necessary. Furthermore, as the value of the dispute is often not very high, the ADR procedures, being free of charge or at low costs, seem to offer a more appropriate solution than long-lived and expensive judicial proceedings.

Report of the European Consumer Centres: “The European Online Marketplace: Consumer Complaints in 2004 “

The report of the European Consumer Centres (ECC) “The European Online Marketplace: Consumer Complaints in 2004”, which was presented during the conference by the ECCs Ireland and Sweden, gives a detailed overview over consumer disputes that can arise in the field of electronic commerce. The number of complaints that the ECCs are confronted with has been on a constant rise for several years now. In 2004 the ECC-Net has registered a total of 2544 information requests, complaints and disputes relating to the online purchase of a product (compared to 1863 for the first 10 months of the year 2003). In 831 cases a file was opened (590 in 2003). Electronic Commerce therefore makes up an important part of the ECCs’ work. For the ECC Finland e.g. electronic commerce represented 39% of all information requests, complaints and disputes while the ECC Belgium has lived an increase of 122% in the number of files treated.

In most cases the consumers complained about a non-delivery of the ordered product. Here the report confirms the results of a study carried out by the ECC-Net in 2003. Out of 114 test orders only 75 orders had been carried out and delivered. In 2004 the situation seemed not to have improved. In 41 % of the cases the consumers complained about a problem with the delivery. 31% (258 cases) related to non-delivery and in 5.5% the product arrived with a delay.

In 15.7% of the cases (130) the buyers received a defective product, in 5.8% it did not correspond. Further complaints included the disrespect of the time limit for the withdrawal from the contract and guarantees that were not fulfilled. In most cases the problem was caused by a bad customer service.

A glance at the geographical background of the websites involved shows that German and English websites present important online marketplaces and come in the two first positions while France is on the third place. Many of the consumers that made complaints after a purchase abroad live in Scandinavian countries, which are countries where electronic commerce is largely spread and used by the majority of consumers (39% of the whole commerce).

Unfortunately, a significant number of consumers were victims of fraudulent actions, e. g. fictive lotteries, spam or false traders that either usurp the identity of existing traders to betray consumers or make use of websites offering a platform for sale auctions to collect a payment in advance through offering products for sale that they will never deliver. The anonym character of online transactions facilitates frauds and because of its short-lived character electronic commerce is very difficult to control.

The report of 2004 gives also some interesting information about the online habits of consumers. They show the tendency to buy on websites of providers from neighbouring countries. This is could be explained by a certain familiarity with the language and the culture of the countries next door. It is therefore necessary to inform buyers about the important potential that puts the ensemble of the Internal Market at their disposal. But this can only be achieved when they have the impression that the transactions they perform in other countries are safe.

Practical and legal problems in cross-border electronic commerce

Euro-Info-Consumers, and the different services it offers, has made a similar experience that corresponds with the results of the report:

More than 30% of the disputes that were handled by the Clearinghouse France in the first months of 2005 were electronic commerce cases and they are on a constant rise. It is very important to analyse the reasons for the important number of complaints and disputes in this field as more and more consumers benefit from the international market that is available for them on a simple mouse click. In Germany e. g. 60% of the population are currently having an access to the Internet, half of the Internet users is regularly shopping online.

Predictions for the years to come, say that the sales on the net will triplicate until 2008. But the virtual market will always be characterised by its special features and dangers which can lead to a considerable number of cross-border disputes. The geographical distance between trader and buyer, the possible linguistic problems when buying abroad and the differences between the national judicial systems make legal action in this kind of dispute very difficult, even more as within the frame of electronic commerce it is necessary to react quickly. Sometimes, dishonest traders abuse of this situation. But there are also some legal problems that are specific to electronic commerce: the question of the law applicable on these kinds of transactions, the liability of the provider of internet platforms on which the transactions take place or the legal category for new types of contracts. As the context is an international market one has often to wait until the single national judicial systems provide answers to these questions.

The position of a professional: The online-marketplace eBay

A new form of contract constitutes e.g. the sale via platforms for online auctions like eBay. These platforms bring together buyers and sellers across the world who want to exchange products. Although an elaborated online system is used to conclude the contracts on that platform, eBay itself considers that it is not involved in the contracts between buyer and seller. As the system is easy to use and enables the sellers to reach a lot of people, more and more small businesses of eBay-sellers are opened. At the same time, new practical and legal questions arise from the situation:

While the German Federal Court of Justice (Bundesgerichtshof) has decided that it is not a real auction sale but that the consumer has to be protected like in any form of long distance sale, in particular by granting him a right of withdrawal of 14 days, when he buys from a professional, it is not said that all European jurisdictions will follow this example. Also, many e-Bay-sellers are not aware of the fact that they are considered as professionals and that they have to respect a certain number of rules.

It is clear that for such an important marketplace as eBay, legal security for the consumer is indispensable, a fact that also the representatives from eBay are now aware of.

It is evident that the consumer has to be protected during his transactions via eBay in order to benefit fully from electronic commerce. As Mr. Osthaus, representative from eBay Germany, emphasised, the differences between the online and the offline trade have to be reduced as much as possible. But at the same time the consumers have to be made aware that there will always be differences between these two modes of transactions and that they always have to be cautious.

The staff in charge of the security at eBay works on three levels: prevention, early detection of risks and the prosecution of fraudulent actions. For better information of consumers eBay has set up a security centre on its homepage to make the consumers aware of the security measures they can take. The website informs also about current fraud attempts that aim at certain sellers or buyers. In addition, a description of every buyer and seller is provided that tells persons interested in a transaction how reliable the other party is. A third party of confidence with whom eBay collaborates is deemed to increase the security of monetary transactions.

At the same time eBay endeavours to cooperate with authorities and the legislator with the aim of making this kind of transaction more secure and of finding a legal practice that is adapted to the reality of the online marketplace. eBay also tries to reopen the dialogue between seller and buyer in case of a dispute with the help of an electronic file through which both parties can communicate with each other to find a solution. If a member does not adhere to the principles of eBay for several times or violates the law he can be dismissed from the marketplace.

The German Centre for Combatting Unfair Competition (Wettbewerbszentrale) and the French consumer protection authority (DGCCRF)

Beside the providers of online services other institutions and authorities strive for a regulation of the online market place as e. g. the German Wettbewerbszentrale and the French DGCCRF. Although they come from two different contexts their work overlaps in certain aspects.

The **Wettbewerbszentrale**, existing for more than hundred years, has its origin in the business world and its members are e. g. chambers of industry and commerce, guilds and companies. The actors from this field, traders and producers, wished for an adequate instrument of control to prosecute possible unfair practices in order to establish an efficient protection against threats from competitors but also a protection for consumers which is needed in the field of electronic commerce.

For this purpose the Wettbewerbszentrale gives advice to its members on the regulations for a fair competition. It also acts on a repressive and judicial level to defend a sane market. The Wettbewerbszentrale receives about 20 000 information requests and complaints per year of which the majority comes from its own members. But more and more consumers turn to the Wettbewerbszentrale as well when they feel to be victims of fraudulent actions. These requests or complaints concern e. g. non-transparent sale methods, lotteries or misleading advertising.

The Wettbewerbszentrale receives also a minor number of cross-border information requests and complaints (100).

Of all cases received in 2004 about 4000 came from the field of electronic commerce. In most cases it concerned the disrespect of the term for withdrawal from the contract, abusive clauses or problems with the identification of the seller (obligatory legal notice).

However, the Wettbewerbszentrale cannot enforce the consumer's claims. It has e. g. no means to get the contract cancelled and to obtain reimbursements. What it can do is to contact the seller for the sake of market regulation and prevention of future abuses and demand him to sign a declaration to abstain from certain actions (Unterlassungserklärung). In case of non-respect of such a declaration the seller will be obliged to pay an important fine (3000-6000 euros). If the company refuses to sign such a declaration and the chambers of industry and commerce are not able to find an extrajudicial solution to the dispute between Wettbewerbszentrale and the company the Wettbewerbszentrale can bring the dispute before a court to obtain a sentence that imposes an obligation to non-act. But this is very seldom as until now 80% of the cases could be settled out of court, 1000 cases via conciliation at the chambers of industry and commerce and only 454 cases needed the intervention of a court. These figures show once again the importance of out-of-court solutions in the fields of consumer rights and fair competition.

Just as the Wettbewerbszentrale the French **DGCCRF** (Direction Générale de la Concurrence, de la Consommation et de la Répression des Fraudes) cannot help consumers to solve civil disputes. The role of this governmental agency is to control the observance of consumer rights and the laws on competition, to trace all violations and, if necessary, to initiate legal proceedings that can lead to considerable penalties or even a prison term for the violating companies.

The French online marketplace is booming, a third of the population has access to the Internet and the number is rising continuously. The sales figures are between 5.5 and 7 billion euros with an increase of about 60% in 2004.

A legal frame for consumers in this field is of first importance, the more so as the DGCCRF registers every day electronic commerce disputes for which the reasons are identical or similar to the ones mentioned by the other organisations (see above), e. g. misleading description of the product, lack of transparency concerning the general terms and conditions, the disrespect of the legal obligation for the identification of the seller, delays or non-delivery. For the protection of consumers the DGCCRF undertakes regular controls on the Internet and its monitoring centre in Morlaix can identify violations in the different sectors to prepare the judicial prosecution of the violators. In 2004 1435 out of 9000 websites notified to the DGCCRF could be checked. In about 30% of these a suspicion of violation existed, in 290 cases a reminder of the regulations in force was addressed to the professionals and in 35 cases legal proceedings were initiated. In agreement with the guidelines established by the OECD the DGCCRF has seized the necessity of an international cooperation for a successful combat against unfair

cross-border actions. The DGCCRF will be part of the network established by the EU-Regulation N°2006/2004 on the cooperation between national authorities responsible for the enforcement of consumer protection laws.

While the mission of the DGCCRF and the Wettbewerbszentrale implies rather general repressive measures, ADR-bodies can often help in specific cases assisting individual consumers in their cross border disputes with a professional.

Settling cross-border e-commerce disputes with the help of online dispute resolution (ODR) schemes:

Presentation of different online alternative dispute resolution bodies

Several European ADR-bodies presented their activities:

The **Internetombudsmann Germany** informs consumers and professionals in all questions concerning online transactions and in particular about the corresponding legal setting. Furthermore it provides the only online ADR-procedure in Germany with the help of a confidential electronic file. In its 1 ½ years of activity the Internetombudsmann received about 1069 requests. 821 were accepted for an ADR-procedure, 729 cases could already be closed, 92 are still in course. When a company refuses to participate at the ADR-procedure it can be entered into a “blacklist” for the information of other consumers.

The **Ombudsman Austria** represents, like its German counterpart that was founded on this model, a contact point for all questions on electronic commerce. It informs the public and accepts complaints for which it offers a mediation between consumer and professional free of charge.

From December 1999 to the end of 2004 the Ombudsman was able to solve 3250 complaints with a dispute value of altogether 2.45 million Euros of which about 500 000 Euros per year were returned to consumers having an online dispute with a professional. Since 1999 the number of complaints has been on a continuous rise and was at 912 complaints in 2004. 73% of these 912 cases could be settled but for 12% an action had to be filed.

Besides these complaints the Ombudsman has answered 12 000 information requests. Because of the increase in complaints the Ombudsman has created a trustmark for online companies that is approved by the Austrian government. It also participates at the creation of a European trustmark.

The Forum des droits sur l’Internet (The Internet Rights Forum) is a French association competent for the legal and social issues related to the Internet. One of its missions is to offer mediation service to solve disputes related to the Internet ad concerning at least one individual (**Médiateur du Net**). The service was established in September 2004, since then it has received more than 4000 requests. It also treated cross border disputes in which it cooperates with the ECC France.

The **Hungarian Internet mediator (Infomediator)** has just started its work to protect users of the new technologies that are just being set up in Hungary.

As the number of Internet users is still low in Hungary (3.36% of the population buys via Internet and only 23% of the population has access to the Internet) the ADR-body receives 8-9 requests weekly of which 40% concern legal questions, 25% are complaints against providers of services such as access to the Internet. The Internetombudsman offers also vast information on all questions arising from electronic commerce for consumers as well as for professionals but also for the government and public services.

The service **Concilia Online**, offered by the chamber of industry and commerce in Florence tries to settle conflicts between parties of a large distance with the help of not only an electronic file but also via chat rooms and videoconferences.

Importance of alternative schemes for the settlement of disputes

The multiplication of initiatives in the field of Alternative Dispute Resolution shows the importance of alternative schemes for the settlement of disputes involving electronic commerce. However, it has to be kept in mind that the two recommendations of the European commission concerning ADR (Recommendations 98/257/CE and 2001/310/CE) that set out minimum standards for the neutrality, the legality, the transparency and the effectiveness of the ADR-proceedings are important tools to strengthen the confidence of the users, as stressed Christina Moritz from the German contact point for ADR (ECC-Germany). The professionals that were once unwilling to make use of alternative dispute resolution schemes are beginning to use it more and more. National governments support this development as courts are released, costs reduced and even the behaviour of the citizens is changed. In fact ADR allows for a reopening of dialogue between the parties that may increase their confidence in the Internal Market, as emphasised Dr. Heger from the German Federal Ministry of Justice.

But ADR can not offer an answer to all problems arising from electronic commerce. In some cases only public authorities and the judicial system can help the consumer. Important work has still to be done with regard to fraud via an international cooperation in order to stop illegal and unfair practices against consumers.

Contact for further requests:

Stephanie Schmidt

Legal adviser of the European Consumer Centre Kehl / German Contact Point for Alternative Dispute Resolution, German Contact Point for electronic commerce

Phone: +49 7851 / 991 48-19; Fax: -11;

eMail: schmidt@euroinfo-kehl.com

With the participation of :

- **Tereza STRUNCOVA** European Commission, General Direction Internal Market and Services,
- **Dieter KUBLITZ**, Online mediator Germany (www.ombudsmann.de),
- **Jürgen GANGOLY** Online mediator Austria (www.ombudsmann.at),
- **Dr. Erika MAYER** Online mediator Hungary (www.infomediator.hu),
- **Sandra Karine PEDINI** Chamber of Commerce of Florence (Unioncamere Toscana), *Concilia online*, Online conciliation service,
- **Jennifer BEAL** German Centre for Combatting Unfair Competition (Zentrale zur Bekämpfung unlauteren Wettbewerbs e.V.), director of the branch Berlin-Brandenburg,
- **Dr. Wolf OSTHAUS** ebay GmbH, Germany,
- **Dr. Mathias HEGER** German Federal Ministry of Justice, Berlin,
- **André LONGUET DES DIGUÈRES** director of the French consumer protection office (DGCCRF), French Ministry of Economy, Paris
- **Fredrik NORDQUIST** European Consumer Centre Sweden, Stockholm,
- **Arthur HILLIARD** European Consumer Centre Ireland, Dublin, co-author of the ECC Network's Report on the European online marketplace with Frederic Nordquist, and
- **Dr. Martine MÉRIGEAU**, director of Euro-Info-Consumers in Kehl,
- **Catherine RAUCH**, legal advisor of the European Consumer Centre France in Kehl, Euro-Info-Consumers,
- **Stephanie SCHMIDT**, legal advisor of the German Contact Point for electronic commerce and the German Contact Point for alternative dispute resolution, Euro-Info-Consumers, Kehl and finally
- **Christian MORITZ**, director of the German Contact Point for alternative dispute resolution, Euro-Info-Consumers, Kehl.