

OBSTACLES OF ODR IN DEVELOPING COUNTIES

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Abstract

While in the 21st century it is obvious, that a 5-year old children is fully capable of the skill of searching on the Youtube for his favorite fairy tail to watch, the online dispute resolution (ODR) is facing many obstacles when introducing it to the sector of SMEs in developing counties. The short article is collecting the most common factors that hinder the effectiveness of this alternative dispute resolution technic, including: language knowledge, IT-skills, and low “courage” level of legal representatives. The article is based on Hungarian and partially international researches, and also suggests steps to minimize these obstacles in counties where the ODR is not incorporated to the legal order so far.

The need for alternative dispute resolution (ADR) and the growing demand for online dispute resolution (ODR) as part of it is the clear consequence of e-commerce and the cross-border transactions. According to the latest data of the EU Commission’s Digital Economy and Society Index (DESI), in the European Union 65,6% of the individuals are using the internet for shopping (as an average of the 28 countries)². However, in many aspects of digital economy the developing countries are performing much worse than the developed ones. In my beliefs this phenomena has commons roots with the obstacles of the ODR.

In 2012 Louis Del Duca, Colin Rule and Zbynek Loeb³ have worked out minimum (or ideal) criteria for a global ODR-system. Their proposed plan is amazing, but does not take into consideration the fact of different levels of IT and language skills of the consumers. For first, I would like to highlight the language problems. The well-known book of Pablo Cortes which is summarizing the EU-focused regulation of ODR, is based on 4 country’s experiences: USA, Ireland, UK and Spain. As the author himself declares among the methodology issues, that even his “language skills” are factors of scientific research⁴, so not surprisingly beside his mother tongue, only English language countries’ experiences are examined. If we are looking through the countries that are successfully incorporated the ODR to their legal system, most of them are English-speaking. From the consumers perspective: it is much easier to buy something on the internet with low foreign language skills than to complaint or successfully resolve a dispute on that foreign language (full with legal expressions the consumer do not even know on his/her mother tongue...). This problem occurs mainly in developing counties, where the language-knowledge is at lower level. According to the statistics of Eurostat⁵ as an average of 34% of the European population simply does not speak any foreign languages. In Hungary this ratio is shocking 64%, but in the neighbor countries these numbers are significantly better, but still high enough to hinder international commerce⁶. But language obstacles occur only in cross-border transactions. When thinking and working on regulating and also promoting ODR-systems, in my opinion a

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² Data from the European Commission’s website: <https://digital-agenda-data.eu/datasets/desi/visualizations> (as available on January 9th, 2017.)

³ Louis Del Duca, Colin Rule, and Zbynek Loeb: Facilitating Expansion of Cross-Border E-Commerce: Developing a Global Online Dispute Resolution System (Lessons Derived from Existing ODR Systems – Work of the United Nations Commission on International Trade Law), In. Penn State Journal of Law & International Affairs 59 (2012) 59-85.pp. Available online at: <http://elibrary.law.psu.edu/jlia/vol1/iss1/4>

⁴ Pablo Cortes: Online Dispute Resolution for Consumers in the European Union. Routledge, 2011. p. 5.

⁵ Eurostat: Adult Education Survey 2011 (Number of foreign languages known (self-reported) by sex.

⁶ eg.: Czeck Republic: 31%, Slovakia: 15%.

country should first “act local”: the more national commercial disputes are solved easily (and cheaply and faster) via ODR, the more likely international transactions can be lead to this way as well. Another exciting detail on language obstacles is the following: on the official homepage of the EU ODR Platform⁷ we can find 21 dispute resolution bodies from Hungary, but only 1 of them offers the chance to handle the procedure in English, all the others services are only available in Hungarian. This is no other but a clear obstacle of international dispute resolution. But surprisingly the situation is nothing better in developed countries: in Germany from the 15, in the Netherlands from 3 dispute resolution bodies none is available but in German or in Dutch language. However, in the Check Republic the Kancelář finančního arbitra⁸ (Office of the Financial Arbitrator, Government Agency) is available on 25 languages, and a perfect model of online dispute resolution platform in action.

The IT-skills are indispensable for electronic commerce, and online dispute resolution is available for consumers that can use IT-tools. According to the latest, December 2016 data of Eurostat, about two thirds of internet users in the EU shopped online in 2016, and 32 % of online shoppers bought or ordered goods or services from sellers in other EU countries, and the ratio has a growing trend⁹. In Hungary during the year of 2015 36% of the households made e-commercial transactions, and 19% of the income of the enterprises came from e-sales¹⁰. This shows that even in Hungary the ratio of e-transactions is growing, and this indicates a greater attention on the ODR as well. As a first step, for enterprises offering the possibility of e-sale, a “best practice” for (at least national) ODR should be introduced.

The national legal culture is crucial for the success of ODR. In case of counties where suing each other is almost a national sport - like in case of Hungary – it is not easy to introduce alternative techniques of dispute resolution. However, there can be seen one significant success on this field: mediation is the concrete ADR method that is becoming more and more popular – thanks to the regulation that makes it mandatory in some of the cases. This is interpreted in the legal literature in Hungary as a “trick” to promote this method, while binding the parties to go to the first session, at least they should sit and listen while the mediator is explaining what the mediation itself is. As an analogy, the ODR could be promoted the same way: if we are creating a regulatory framework that makes it mandatory for the parties to try to solve the dispute via ODR first, the method will be at least better known. But as also in the case of mediation, the legal representatives can make significant efforts to ruin the achievements. It is often a financial question, that legal representatives hindering the alternative dispute resolution methods, as they are simply not as profitable for them as a suit.

Concluding the upper mentioned obstacles, I would suggest that ODR in developing countries must be introduced and regulated step-by-step: for first, it must be promoted in national transactions, and as the IT-skills will be soon high enough (basically with the growing of the new generations), and also there will be a generation speaking foreign languages, this result can be planted to international level, harmonized with the international standards and best practices. There must be attention given to the legal representatives as well, who can be a major factor of (un)successness.

⁷ Available here: <https://webgate.ec.europa.eu/odr/main/?event=main.home.show> (as on 4th January 2017)

⁸ Available here: <http://www.finarbitr.cz/en/>

⁹ Eurostat: E-commerce statistics for individuals, 2016.

¹⁰ Hungarian Central Statistical Office (KSH): Az infokommunikációs technológiák és szolgáltatások helyzete Magyarországon, 2015. Published in December 2016. Available: <http://www.ksh.hu/docs/hun/xftp/idoszaki/ikt/ikt15.pdf>