



General Assembly

Distr.: Limited
13 March 2012

Original: English

**United Nations Commission
on International Trade Law**
Working Group III (Online Dispute Resolution)
Twenty-fifth session
New York, 21-25 May 2012

Online dispute resolution for cross-border electronic commerce transactions: further issues for consideration in the conception of a global ODR framework

Note by the Secretariat

Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction	1-3	2
II. Online dispute resolution for cross-border electronic transactions: issues for consideration in the conception of a global ODR framework	4-16	2
A. General remarks on the global ODR framework	4-6	2
B. Guidelines and minimum requirements for ODR providers	7-8	3
C. Guidelines and minimum requirements for ODR neutrals	9	3
D. Principles for resolving ODR disputes	10-14	4
E. Consideration of the impact of the Working Group's deliberations on consumer protection; reporting to the Commission	15-16	4



I. Introduction

1. At its forty-third session (New York, 21 June-9 July 2010), the Commission agreed that a Working Group should be established to undertake work in the field of online dispute resolution (ODR) relating to cross-border electronic commerce transactions, including business-to-business (B2B) and business-to-consumer (B2C) transactions. It was also agreed that the form of the legal standard to be prepared should be decided after further discussion of the topic.¹ At its forty-fourth session (Vienna, 27 June-8 July 2011), the Commission reaffirmed the mandate of the Working Group on ODR relating to cross-border electronic transactions, including B2B and B2C transactions.

2. At its twenty-second (Vienna, 13-17 December 2010) and twenty-third sessions (New York, 23-27 May 2011), the Working Group considered the subject of ODR and requested the Secretariat, subject to availability of resources, to undertake research and prepare various documents relating to an ODR framework (A/CN.9/716, para. 115 and A/CN.9/721, para. 140).

3. Further to document A/CN.9/WG.III/WP.110 addressing issues in the concept of a global ODR framework, this note contains further issues for consideration in the concept of a global ODR framework and general remarks relating to documents referred to in the ODR draft Procedural Rules as Appendices (A/CN.9/WG.III/WP.112, paras. 8 and 11) including guidelines for ODR providers, guidelines for neutrals and principles for resolving disputes through the global ODR framework.

II. Online dispute resolution for cross-border electronic transactions: issues for consideration in the conception of a global ODR framework

A. General remarks on the global ODR framework

4. The overall ODR framework may consist of ODR Procedural Rules (the Rules) for resolving disputes and separate and additional documents that complement the Rules. The Rules regulate how ODR proceedings are commenced, processed, decided and terminated (see A/CN.9/WG.III/WP.112). One complementary document is a guideline and minimum requirement for ODR providers, which would include how an ODR provider should administer proceedings and operate an ODR platform in accordance with the Rules. Another complementary document may deal with a code of conduct and minimum requirements for persons serving as neutrals in ODR. All complementary documents should be in conformity with the Rules and are influenced by how the Rules are formulated.

5. Further complementary documents are foreseen to deal with principles for resolving disputes and a cross-border enforcement mechanism (see A/CN.9/WG.III/WP.110, paras. 20-49).

¹ *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 17* (A/65/17), para. 257.

6. The final form of those documents, and whether they should form part of the Rules or be separate, are matters yet to be decided by the Working Group (draft preamble, A/CN.9/WG.III/WP.112, para. 8).

B. Guidelines and minimum requirements for ODR providers

7. The Guidelines and minimum requirements for ODR providers (“Guidelines for providers”) might address such matters as how the provider is to administer ODR proceedings and operate the ODR platform in accordance with the Rules, and may include explanations on how such measures complement and facilitate the operation of the Rules. The Guidelines for providers are intended to further clarify the Rules in matters relating to technical and design aspects of ODR platforms (A/CN.9/WG.III/WP.107, para. 14). Further, the Guidelines for providers could specify adherence to general principles such as technological neutrality and accommodating interoperability and scalability of technologies (A/CN.9/WG.III/WP.107, para. 20, see A/CN.9/WG.III/WP.114 submission by the Government of Canada on proposal for the preparation of principles applicable to Online Dispute Resolution providers and neutrals).

8. Although the Guidelines for providers are to be read in conjunction with the Rules, their content depends to some extent on which matters the Working Group decides to exclude from the Rules. The Working Group may wish to note that issues dealing with functional requirements and technical specifications for ODR providers in relation to the operation of an ODR platform and related matters might be more effectively dealt outside of the Rules themselves.²

C. Guidelines and minimum requirements for ODR neutrals

9. The guidelines and minimum requirements for ODR neutrals (“Guidelines for neutrals”) presumably contemplate a code of conduct (A/CN.9/716, para. 67); basic principles that are essential attributes for neutrals include independence, neutrality and impartiality (A/CN.9/716, para. 66) (A/CN.9/WG.III/WP.114 submission by the Government of Canada on proposal for the preparation of principles applicable to Online Dispute Resolution providers and neutrals); as well as possession of required professional and dispute resolution skills (A/CN.9/716, para. 63). The document may specify a system of accreditation and re-accreditation for neutrals, possibly with two phases: an initial phase focusing on relevant experience of the neutral and a second involving periodic review taking account of feedback from ODR users (A/CN.9/716, para. 65).

² These issues may include: (a) legal or jurisdictional basis for the establishment of ODR providers and/or maintenance and operation of ODR platforms; (b) technical specifications, standards or specific technologies used for identification, authentication or other requirements of an ODR platform; (c) specifications relating to ODR facilities and equipment including any specific technologies to be used (e.g., algorithms or software based thereon).

D. Principles for resolving ODR disputes

10. The Working Group may wish to recall its discussion and the suggestion of an approach using equitable principles, codes of conduct, uniform generic rules or sets of substantive provisions as the basis for deciding cases in order to avoid complex problems that may arise in the interpretation of rules as to applicable law. Views have also been expressed that most of the cases dealt with in ODR could be decided on the basis of the terms of the contract, with little need for resort to complex legal principles, and that any rules devised for ODR should be simple, expeditious and flexible. Some characterized the need as being for a body of general legal principles applicable to a limited fact-based system (A/CN.9/716, para. 101).

11. The Working Group may wish to note that in a global cross-border environment for resolving low-value, high-volume cases, it may be necessary to limit the types of cases dealt with to simple fact-based claims and basic remedies, to avoid the risk of overloading the system with complex cases, making it inefficient and expensive (A/CN.9/716, para. 101).

12. The global ODR framework is intended to be used for resolving disputes arising from low-value, high-volume electronic transactions of which a large portion of the claims are based on a limited number of problems such as goods not ordered, not delivered/provided, not as described, etc. The ODR framework is not intended to address certain types of claims such as bodily harm, consequential damages and debt collection (A/CN.9/739, para. 18). The Working Group may wish to refer to its deliberations on whether the Rules should include an exhaustive list of types of cases falling within or outside the scope of the Rules (A/CN.9/721, para. 50).

13. The Working Group may wish to consider — with a view to simplifying the process and ensuring that ODR is straightforward and efficient for users — that draft annexes A and B of the Rules (A/CN.9/WG.III/WP.112, para. 28) set out a list of possible claims, and responses thereto, to be included respectively in the notice and response under draft Article 4. The suggested wording in these annexes — using check boxes and pre-drafted text — would aim to specify the types of claims that may be advanced by claimants and the types of responses available to respondents. This in turn could assist in determining which of a limited number of available remedies were appropriate for disposition of a particular case (A/CN.9/721, para. 109).

14. Should the Working Group decide to adopt the approach of enumerating possible claims and remedies in Article 4 of the Rules, it may wish to consider the necessity of maintaining reference to the additional document on principles for resolving disputes that is now listed in the draft preamble to the Rules (A/CN.9/WG.III/WP.112, para. 8).

E. Consideration of the impact of the Working Group's deliberations on consumer protection; reporting to the Commission

15. At its forty-fourth session, the Commission "... decided that, in general terms, in the implementation of its mandate, the Working Group should also consider

specifically the impact of its deliberations on consumer protection and that it should report to the Commission at its next session”.³

16. In its twenty-second to twenty-fourth sessions, the Working Group has commented at various times on consumer issues.⁴ The Working Group may wish to take note that key points raised, and views expressed, in those discussions included the following:

(a) As consumer protection was an important public policy consideration, legislation in that field was highly specific to particular jurisdictions, and care should be taken that any approach to ODR not detract from consumer rights at the national level. Non-interference with the rights of consumers under national consumer protection laws would help inspire a climate of confidence in ODR among consumers, and it was not within the remit of the Working Group to address harmonization of national consumer protection laws;

(b) The goal of the current work was to create a separate global system for the resolution of cross-border disputes involving high-volume, low-value cross-border transactions. In such cases, consumers were unlikely to exercise any rights they might have as the cost of doing so was prohibitive in relation to the value of the purchase and furthermore, enforcement of an award would prove difficult. As at present in the case of most cross-border consumer transactions consumers had, in practice, no rights, the creation of an ODR standard could have the effect of creating such rights. With the use of “amicable” dispute resolution methods such as complaint-handling, negotiation and conciliation, parties would be freely consenting to a settlement and thus their rights under consumer laws would not be imperilled. In the case of arbitration, a standard would be needed to preserve the protections of consumer laws and this raised the larger question of what would be the applicable law in an ODR arbitration. An ODR standard might embody “core principles” of consumer protection law. Principles for deciding cases should contemplate the need for high consumer protection content;

(c) Clear and adequate notice of any dispute resolution agreement should be given to make it plain to the consumer what obligations he/she will be taking on and the implications of any choice of law being made; such an agreement should be separate from the main provisions of the contract to better draw the consumer’s attention to it. Consumer protection agencies might assist or represent consumers entering into the dispute resolution process;

(d) The language of ODR proceedings, and thus a full comprehension of the process, were crucial for consumers; the level of understanding required for conclusion of contracts through electronic transactions on the one hand, and for the process of ODR on the other hand, differed.

³ *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 17 (A/66/17)*, para. 218.

⁴ A/CN.9/716, paras. 4, 19, 23, 42-45, 48, 50, 52-54, 76, 87, 89, 90, 96, 101, 104 and 106; A/CN.9/721, paras. 41-43, 46 and 86; A/CN.9/739, para. 25-28 and 73.