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Alternative Dispute Resolution Systems across the European Union, Iceland and Norway

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Abstract

Alternative dispute resolution schemes (ADR) have been developed differently across the EU. It is difficult to determine which of the countries have developed the most successful schemes. Therefore the aim of this article is to summarize different organizational aspects of ADR schemes across the EU, to determine similarities across different countries and to define them in specific systems. Defining these schemes in systems will not only help to evaluate and compare ADR schemes and their success between different countries but will help also professionals, governments and other stakeholders to develop more effective ADR schemes across the EU, Iceland and Norway.

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1. Introduction

The European Commission (hereafter *the EC*) considers that improving consumer confidence in online cross-border shopping by taking appropriate policy action could provide a major boost to economic growth in Europe, because empowered and confident consumers can drive forward the European economy. Empowered consumers who can rely on a robust framework ensuring their safety, information, education, rights, means of redress and enforcement, can actively participate in the market and make it work for them by exercising their power of choice and by having their rights properly enforced. (EUR-Lex, 2011; European Commission, 2012)

Therefore the EC has established different means to ensure a high level of consumer protection all over the European Union (hereafter *the EU*) and *alternative dispute resolution* (hereafter *ADR*) schemes is considered and promoted as one of the most effective consumer complaint solution methods. ADR schemes are known as out-of-court mechanisms, which have been developed across Europe to help citizens who have a dispute, but who have been unable to reach an agreement directly with the trader. ADR schemes usually use a third party such as an arbitrator, mediator or an ombudsman to help the consumer and the trader to reach an amicable settlement. The advantages of ADR schemes are that they offer more flexibility; they are cheaper, quicker and more informal than

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going to court, and by means of ADR schemes the needs of both consumers and professionals can be met better. (EUR-Lex, 2007; European Commission, 2011)

In Europe some of the ADR methods have been used already in ancient period. While in some European countries ADR schemes have a long and successful history of development, but in others they are novelty. The diverse levels of country development, culture and traditions, politics, the economy and other factors have determined that ADR schemes have evolved differently in each of the EU Member States. (The Lawyers & Jurists, 2012)

In 2009 it was concluded by the EC that there were 750 ADR schemes available in the EU for resolution of consumer complaints. (European Commission, 2009) Although this author's research in 2012 revealed that the number of ADR organizations in the EU is less than 750 (Knudsen, 2012), the number of ADR schemes still is high and it is difficult to determine which of the countries have developed these schemes most successfully, because literature do not provide a summary nor comparisons of various organizational aspects of ADR schemes nor their performance. Thus it makes it difficult to analyse the efficiency of ADR mechanism practices chosen by countries, which are used for resolution of consumer national and consumer cross-border complaints, as well as to elaborate on their future development.

Therefore, the purpose of this article is to summarize various organizational principles of ADR schemes resolving consumer disputes in all EU countries, Iceland and Norway, to define their common and distinctive features and to detect if there are common functioning patterns of consumer ADR organizations available in different countries.

2. Methods

The author of the article has used empirical, quantitative and qualitative research perspectives and used primary and secondary data (European Commission, 2006; European Commission, 2007; European Commission, 2009; European Consumer Centre Denmark, 2009; European Parliament, 2011; Nordic Council of Ministers, 2002; Reilly, 2004; Rozdeicze, 2006). ADR schemes were chosen for summarizing and comparing organizational principles mostly by using categories of classification of consumer ADR organizations (Knudsen, 2011). Those were: number of ADRs in country, notification type and number of notified ADR schemes under the EC Recommendations 98/257/EC and 2001/310/EC, organization type, funding type, geographical competence, sectorial competence, legislative procedural type, character of decision, character of trader participation, type of procedural communication, origin of the complaint, limitations of value the of dispute and participation fee. When analysing the results, statistical and analytical methods were used.

3. Findings and Results

After comparing various organizational principles, it was concluded that it is possible to find common features and operating principles for ADR organizations in the field of consumer dispute resolution in different countries, as well as include them in certain contexts. The analysis of different aspects of consumer ADR schemes' operational principles within each country revealed that evident similarities can be identified within geographical and sectorial competences, which were accompanied in some cases with similarities in organizational and funding types as well as procedural types. Overall ADR organizations' principles throughout the EU, Iceland and Norway can be characterized by seven systems. For better understanding of the characteristic features of each system, one must consider how the system works.

3.1. Sectorial System

The sectorial system is characterized by ADR organizations with national competence, which is developed to deal with consumer disputes only in certain sectors such as insurance, banking services, tourism services, postal services etc. Such systems have the advantages that case handlers are experts in their sector and have knowledge about peculiarities of the sector, which helps to assess and to determine the most appropriate legislation for specific disputes and make competent decisions. One of the weaknesses of this system is that the ADR entities may be funded entirely by traders, which can threaten the impartiality of the decisions. Another disadvantage of this system

is the lack of ADR schemes in many sectors thus making it as a limited possibility for consumers to seek help in one of the country's current ADR organizations. This system is typical for Cyprus, France, Ireland, Luxembourg, Malta, Slovakia and the United Kingdom.

3.2. Regional System

In regional systems most of the ADR organizations have competence to resolve different types of consumer complaints within certain country regions, with exception of some ADR organizations that have a national expertise in a particular sector/-s. These schemes are typically founded as public organizations and they are funded by public means. The advantages of these systems are lower volume of complaints and knowledge of specific problems and traders in the local area. Disadvantages of these systems could be considered as unequal quality of complaint resolution in different regions and different decisions in similar disputes, as well as the challenges posed by regional limitations. This system is typical for Spain and Hungary.

3.3. Sectorial-regional System

Characteristics of the sectorial-regional system are that ADR organizations have competence to deal with consumer complaints only in certain sectors of the certain region, with some exceptions at national level. Advantages of the system are that case handlers have expert knowledge of the sector and the region, which can help accurately assess and determine the most appropriate legislation for specific dispute and make competent decisions. However, the disadvantages of this system are the organizations specific sectorial and regional competences, which make it difficult for consumers, especially cross-border consumers, to find suitable organizations. It is as well likely that there are a significant number of consumer disputes areas where no ADR organizations exist, thus making it impossible for consumers to complain in ADR organizations concerning specific matters. In addition, they may have different performance quality, and they can offer different decisions in similar cases. This system is used in Austria, the Czech Republic, Germany, Poland and Portugal.

3.4. Centralized System

Some countries have established a central ADR organization with national competence, which deals with consumer complaints in almost all matters, except some specific sectors where additional ADR organizations are established. Mostly these centralized ADR schemes work as consumer complaint boards. The advantage of centralized system is a possibility to provide the benefits of ADR institutions in all sectors, so that almost all consumers can find help in one of the ADR organizations. The disadvantages of this system can be a high volume of consumer complaints and the dispute resolver's general knowledge in various fields, which could jeopardize the dispute and the decision quality. This system is used in Denmark, Estonia, Finland, Iceland, Latvia, Lithuania, Norway and Sweden.

3.5. Mixed System

Mixed system means that some of ADR organizations in some specific country have a general competence that can deal with disputes in certain sectors among various parties (B2C, B2B, family, etc.), which can be used as well by consumers. This system provides also available ADR organizations in separate sectors and / or regions that exclusively deal with consumer disputes. The advantage of this system is that consumers have the opportunity to turn to professional ADR organizations, which have experience to deal qualitatively with disputes in different areas and between different parties, and it is capable to adapt to any situation. However, such general nature may be as well a disadvantage, because case handlers may not be aware of the specific character of some of the consumer disputes, which thus may affect the quality of dispute resolution and decision-making. In addition, the lack of sectorial coverage is an obstacle for consumers to be able to submit any type of complaints to an ADR organization in the country in question. This system is in use in Belgium and Slovenia.

3.6. Umbrella System

In the umbrella system most sectorial or regional ADR organizations existing in one country are united under one umbrella ADR organization with some national level ADR scheme exceptions in certain sectors. This system's advantage is that the consumer has to be only familiar with the umbrella organization to which one can turn for help and submit the complaint, which will be forwarded further to the appropriate ADR organization by the umbrella organization. In addition, the promotion for recognition is needed only for the umbrella organization, which ensures, promotes and monitors all ADR organizations' performance under its responsibility. However, its disadvantages are the lack of sectorial coverage, which prevents consumers from a possibility to resolve all kinds of complaints in the country's current ADR organizations. This system operates in Greece and the Netherlands.

3.7. Fragmented System

In the fragmented system there are series of ADR schemes available in the country competent to deal with: all types of consumer complaints at national level; in specific sector in specific region; in specific sector at national level; all kinds of complaints in specific region. The advantage of this system is a possibility for consumers to be able to get assistance in almost all kinds of complaints, as there is at least one ADR organization available for each specific complaint. Additionally, the existence of a number of ADR organizations in the field promotes competition between them in terms of quality, which positively affects consumers. However, the large number of ADR schemes and overlapping jurisdiction make it difficult for consumers, especially in cross-border consumers, to discover the competent authority. The system is in use in Italy.

4. Conclusions and Recommendations

The profound analysis of diverse aspects of the operational principles of consumer ADR schemes across the EU, Iceland and Norway has revealed that countries have tendencies to adopt other country's ADR experiences and develop similar working mechanisms of consumer ADR organizations. The research has revealed that there are 7 different working patterns of ADR schemes that countries have developed. Almost all countries of the EU, Iceland and Norway could be linked to one of 7 ADR systems. Only Bulgaria and Romania did not fall under any of the elaborated systems as they were the last ones to start development of ADR organizations in their countries and it is yet difficult to determine their development strategy at this stage. It could be concluded as well that some of the systems have territorial development tendencies which means that the same system is used more in certain regions, for example, centralized ADR systems have developed only in Northern Europe, sectorial-regional ADR systems have developed mostly in Central Europe whereas sectorial ADR systems are typical mostly for Western Europe.

Overall ADR systems were created mainly based on similarities of geographical and sectorial competences. In some cases additional similarities within systems could be detected regarding the organization type of the ADR schemes, the funding types and the procedural types. The rest of the analysis indicated that ADR schemes could be developed on a basis of diverse combinations of organizational principles, which sometimes could lead to similarly structured ADR organizations in different countries.

The research has revealed that it is possible to classify consumer ADR schemes within EU, Iceland and Norway in certain systems. Creation of ADR systems can help to better evaluate and compare the effectiveness of ADR schemes between different countries regarding the resolution of consumer disputes and consumer cross-border disputes. By identifying the countries that have been most successful in this respect, one can determine which of the ADR systems work best for consumers and thus help professionals, governments, the EC and other stakeholders to develop future ADR schemes considering these particularities.

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