



EUROPEAN COMMISSION

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Dear President,

The Commission would like to thank the Bundesrat for its Opinion on the proposal for a Regulation of the European Parliament and of the Council on online dispute resolution for consumer disputes (Regulation on consumer ODR) {COM(2011) 794 final} and apologises for the delay in replying.

The Commission welcomes the detailed observations and suggestions made by the Bundesrat and appreciates this very constructive contribution to the Commission's proposal.

The Commission shares the Bundesrat's view that the proposal for a Regulation on consumer ODR should be fully aligned as regards the terminology employed with the proposal for a Directive of the European Parliament and of the Council on alternative dispute resolution for consumer disputes and amending Regulation (EC) No. 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR) {COM(2011) 793 final}.

The Commission is aware that the German language versions of both legislative proposals use divergent wordings where the text of both instruments should be identical. The issue has been raised in the Council's preparatory bodies, where it has been suggested to make the necessary corrections in the German language version when the final text is adopted by the co-legislators.

As regards the scope, the proposal is a targeted legislative initiative aiming to encourage consumers in the Single Market to shop online and across borders. The Commission therefore decided not to extend the scope to offline transactions, including transactions where the trader offers or the consumer orders the goods or services by telephone or telefax.

Regarding the trader's place of establishment, the Commission would like to underline that a broad definition in Article 4 (f) of the proposed Regulation is necessary to ensure the effectiveness of the envisaged ODR platform. All online traders doing business from a Member State should be required to provide consumers with information on their e-mail address and the ADR entity by which they are covered. For example, an online trader doing business from a branch located in a Member State should not be exempt from such information obligation on the grounds that it has its statutory seat and central administration outside the Union.

*Mr Horst Seehofer
President of the German Bundesrat
Leipziger Straße 3 - 4
D-10117 Berlin*

The Commission takes note of the Bundesrat's observation that where the proposed Regulation makes reference to the trader's place of establishment in order to determine the cross-border nature of an online sale of goods or provision of services, the broad definition of the trader's place of establishment may lead to an unintentionally narrow concept of the cross-border qualification which, in turn, could lead to an unintended limitation of the scope. The Commission will clarify and actively promote, in the inter-institutional negotiations, a broad concept of the cross-border qualification. The Commission takes note, in that context, of the Bundesrat's suggestion to draw on the relevant wording in the Commission's proposal for a Regulation of the European Parliament and of the Council on a Common European Sales Law {COM(2011) 635 final}.

As regards the suggestion to extend the scope to disputes related to pre-contractual duties, the Commission has taken note of your comment. Furthermore, with regard to disputes concerning product liability under Directive 85/374/EEC, the system envisaged under the Commission proposal is built on the requirement that consumers are informed about the trader's e-mail address and the ADR entity by which the trader is covered. The proposal stipulates that the consumer should be able to find this information on the trader's website or, if the trader makes his offer by e-mail or another textual message transmitted by electronic means, in that message. If product liability disputes were to be integrated into the system envisaged by the proposed Regulation, the proposal would need to extend relevant information obligations to all persons qualifying as "producers" or deemed to be producers under Article 3 of Directive 85/374/EEC.

The Commission takes note of the Bundesrat's observation on the definition of "electronic means" in Article 4(d) of the proposed Regulation which relates to the definition of "online sale of goods or provision of services" in Article 4(c) of the proposal and clarifies that the proposed Regulation does not intend to exclude the online booking of a holiday offered by a trader established in another Member State.

The Commission shares the view that ODR facilitators should not be required to give subjective value judgments about the advantages and disadvantages of specific ADR procedures.

The Commission welcomes the positive opinion of the Bundesrat as regards setting maximum time-limits for the conclusion of disputes transmitted to ADR entities via the ODR platform. The Commission considers a general time-limit of 30 days as foreseen in Article 9(b) of the proposed Regulation appropriate and would like to underline that this time-limit draws on existing practice of some ADR entities providing ODR services in the Member States. Furthermore, the Commission believes that the possibility to conduct the procedure online as foreseen in Article 5(3)(d) of the proposed Regulation will allow for substantial time savings during the dispute resolution procedure. Finally, it should also be noted that the 30-day time-limit is a general time-limit which allows for extension in the case of complex disputes.

The Commission acknowledges the particular importance of the European Consumer Centres Network for coordinating cross-border ADR procedures and agrees that Member States should make full use of this resource also in the context of the proposed Regulation. In view of the expertise and know-how acquired in the European Consumer Centres and the synergies that would be created, the Commission acknowledges the

advantages of appointing the European Consumer Centres as ODR contact points under the proposed Regulation.

I hope that these clarifications address the observations and suggestions made by the Bundesrat and I look forward to continuing our political dialogue in the future.

Yours faithfully,

*Maroš Šefčovič
Vice-President*